Supreme Court
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No.

IN THE

Supreme Court of the United States

THOMAS RIDGE, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Petitioners,

v.

DAVID POWELL, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the United States Department of Education exceed its rule making authority under Section 602 of Title VI of the Civil Rights Act of 1964 and create substantive federal law, where, under the guise of effectuating Section 601 of the Act, which prohibits only intentional discrimination, it promulgated a regulation purportedly limiting the discretion of federally-funded state agencies when their actions allegedly result in a discriminatory effect upon minorities?

2. Did Congress intend to create a private right of action to enforce a generally worded regulation promulgated by the Department of Education under Section 602 of Title VI of the Civil Rights Act of 1964 that prohibits federally-funded state agencies from utilizing criteria or methods of administration which have a discriminatory effect on minorities?

3. Can a generally worded regulation promulgated by the United States Department of Education — which regulation prohibits recipients of federal funds from utilizing criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of a program protecting individuals of a particular race, color, or national origin — support a broad-based attack upon state legislation establishing a system for funding public education in the state?

LIST OF PARTIES

Petitioners are Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania; James P. Gallagher, Chairperson of the Commonwealth of Pennsylvania State Board of Education; Eugene Hickok, Pennsylvania Secretary of Education; and Barbara Hafer, Treasurer of the Commonwealth of Pennsylvania.

Defendant intervenors in the district court below are State Representative Matthew J. Ryan, State Senator Robert C. Jubelirer, State Representative Jess M. Stairs, and State Senator James J. Rhoades.

Respondents are David Powell; Shelean Parks; Patrice Everage; Julia A. Davis; Yvette Bland; Geraldine Newton; Maria M. Rivera; Mary E. Miller; Gregory Luzak; Catherine Luzak; Fu Zhen Xie; The Black Clergy of Philadelphia and Vicinity; Philadelphia Branch of NAACP; Aspira, Inc. of Pennsylvania; Parents Union For Public Schools; Citizens Committee On Public Education In Philadelphia; Parents United For Better Schools, Inc.; David W. Hornbeck, Superintendent, The School District Of Philadelphia; Floyd W. Alston, President, Board of Education of The School District of Philadelphia; Board of Education of The School District of Philadelphia; The School District of Philadelphia; Edward G. Rendell, Mayor, City of Philadelphia; and the City of Philadelphia.

Plaintiff intervenors in the district court below are Philadelphia Federation of Teachers Local 3 and Ted Kirsch, President, Guardian Ad Litem.

There are no parent companies or subsidiaries of any party known to Petitioners.

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Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit, which reversed the final judgment of the United States District Court for the Eastern District of Pennsylvania dismissing this action with prejudice.

OPINIONS BELOW

The opinion and order of the Court of Appeals for the Third Circuit are not yet reported in the Federal Reporter (Third). They are unofficially reported at *Powell v. Ridge*, Nos. 98-2096, 98-2157, 1999 WL 643364 (3d Cir. August 25, 1999). The opinion and order are reprinted in Appendix A.

The memorandum opinion and order of the United States District Court for the Eastern District of Pennsylvania, issued November 18, 1999, are not reported in the Federal Supplement (Second). They are unofficially reported at *Powell v. Ridge*, No. 98cv01223, 1998 WL 804727 (E.D.Pa. Nov. 18, 1998). The memorandum opinion and order are reprinted in Appendix B.

STATEMENT OF JURISDICTION

The judgment and order of the United States Court of Appeals for the Third Circuit were filed on August 25, 1999, and this petition for writ of certiorari has been filed within ninety days of that date. This Court has jurisdiction to review the decision of the Third Circuit pursuant to 28 U.S.C. § 1254 (1994).

Petitioners are not challenging the constitutionality of any statute.

RELEVANT STATUTES AND REGULATIONS

The relevant United States statutory provisions are Sections 601 and 602 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d and 2000d-1 (1994). These provisions are reprinted in Appendix C.

The relevant federal regulatory provision is 34 C.F.R. §100.3(b) (1999). This provision is reprinted in Appendix D.

The relevant Pennsylvania statutory provisions are found in 24 P.S. §§ 6-601 to 6-695 (giving local governments authority to impose taxes for public education); and §§ 25-2502 to 25-2502.35, 25-2509.1, 25-2509.3, 25-2509.5, 8329 and 8535 (pertinent Commonwealth public school funding statutes) (West 1992 and West Supp.1999). These provisions are reprinted in Appendix E.

The relevant state regulatory provision is found in 351 Pa. Code 12.12-100 (1999) (creating the School District of Philadelphia). This provision is reprinted in Appendix F.

The relevant municipal codes are found in Philadelphia Municipal Code §§ 19-1801, 1804-1806 (authorizing School District of Philadelphia to levy special taxes for public education). These provisions are reprinted in Appendix G.

STATEMENT OF THE CASE

Background

The questions presented in this petition are familiar to this Court but have not yet been decided by it. Before plaintiffs filed their complaint in this case, the Court of Appeals for the Third Circuit held in another case that "a private right of action exists under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI of the Civil Rights Act of 1964." *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925, 927 (3d Cir. 1997). This Court granted the petition for a writ of certiorari in that case, but later vacated the judgment of the court of appeals as moot. *Chester Residents*, ___ U.S. __, 118 S.Ct. 2296 (1998), *vacated as moot*, __ U.S. __, 119 S.Ct. 22 (1998). This case presents the identical, important federal question decided by the Third Circuit in *Chester Residents*. *See* Appendix A, p. 17a (acknowledging that in *Chester Residents*, it "considered the [same] issue before us here, 'whether a pri-

vate right of action exists under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI.'").

The Complaint

Plaintiffs' complaint represents a broad-based attack on the entire legislative system for funding public education in the Commonwealth of Pennsylvania based on a single "discriminatory effect" regulation promulgated by the United States Department of Education under Title VI of the Civil Rights Act of 1964. Plaintiffs are the City and School District of Philadelphia, several parents of children attending Philadelphia public schools, several organizations that allegedly provide services that supplement or are ancillary to the educational system in Philadelphia, and several local public officials and entities. Appendix H, pp. 202a-208a, ¶¶ 3-26. Their complaint has two counts. Count I is for violation of "Title VI Implementation Regulations," *i.e.*, 34 C.F.R. §100.3(b), and Count II is for violation of 42 U.S.C. § 1983. Plaintiffs seek a declaration that the defendants' "funding policies and practices" discriminate against minorities and a broadly-worded injunction prohibiting defendants from "continuing to implement a system of funding public schools that discriminates against . . . minority children enrolled in the School District of Philadelphia."

While the complaint principally focuses on the Basic Education Funding ("BEF") element of the funds provided by the Commonwealth to the various school districts,[1] the Court of Appeals read the Complaint to attack both that element and total funding as well. Appendix A, p. 13a and n.2. The complaint alleges that the Commonwealth has a "statutorily established system for funding public school education [that] depends upon a combination of locally generated revenues . . ., state funds. . . , and . . . federal funds." Appendix H, pp. 215a-216a, ¶ 47. Plaintiffs claim that defendants' "policies and practices in [that statutorily established] funding system" lead

1. *See* Appendix H, pp. 215a-217a, ¶¶ 47-49, 51.

to "racial distinctions in the distribution of [all] revenues" and discrimination against "school districts . . . such as Philadelphia with relatively high non-white-enrollment." *Id.*, pp. 219a, 223a, ¶¶ 59-60, 74.

Plaintiffs' complaint does not allege that defendants intentionally discriminated against minorities in making school funding choices or that the school funding system provides less funding statewide to minority students. Rather, plaintiffs claim that the Pennsylvania legislative system results in a disparate impact upon certain school districts in the Commonwealth with large populations of minority students, particularly the School District of Philadelphia. In support of their disparate impact claim, plaintiffs contend that the School District of Philadelphia has special needs that require funding beyond that required by other school districts. These special needs allegedly include severe poverty; persistent racial segregation; low academic performance; and high incidences of support cases, child abuse, juvenile delinquency, births to single mothers, welfare placements, and AFDC placements. Appendix H, pp. 212a-215a, 220a-221a, ¶¶ 37-46, 65. According to the complaint, the funding methods employed by the Commonwealth are insufficient to "meet the needs of a substantial number of its students particularly including its racial and other minority students." *Id.*, pp. 214a-215a, ¶ 45.

Pennsylvania Educational Funding System

Under the Pennsylvania statutory system, as in the vast majority of other states, public education is financed by a combination of state and local funds.

State Funding

The Pennsylvania statutory school funding system, and, in particular, the BEF allocation formula, is set forth in annual legislative enactments.[2] In calculating BEF payments, the Pennsylvania Department of Education ("PDOE") applies the

2. The BEF formula used in a given school year is set forth in a separate statute. *See* 24 P.S. §§ 25-2502.29 (1994/95 school year), 25-2502.31

legislative formula, which employs such factors as the average personal income of the school district, its real property valuation, its school population and its residents' poverty level.[3]

In years prior to 1997-1998, these and other factors were included in the formula, which has generally taken into account the size and age of each school district's student population, its number of low-income students, its local tax effort, and its population density. *See* 24 P.S. §§ 25-2502 to 25-2502.32, reprinted in Appendix E.

In addition to the BEF allocation, school districts also receive substantial additional payments from the Commonwealth, including payments for special education, payments to intermediate units, payments for transportation of non-public school students and payments for social security and retirement subsidies. These payments are based upon various allotments, formulas or factors. *See, e.g.*, 24 P.S. §§ 25-2509.1 (intermediate units), 25-2509.3 (non-public

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NOTES *(continued)*
(1995/96 school year), 25-2502.33 (1996/97 school year), and 25-2502.35 (1997/98 school year), reprinted in Appendix E.

3. The 1997-1998 school year was the most recent school year for which data was available at the time the case was pending in the district court. For the 1997-1998 school year, the Commonwealth paid each qualifying school district a BEF allocation consisting of five parts: (1) a base amount equal to the BEF allocation for the prior school year; (2) a base supplement payable to districts whose 1998-1999 market value/personal income aid ratio is equal to or greater than 0.4000; (3) a growth supplement payable to districts whose average daily membership between the 1996-1997 and 1997-1998 school years; (4) a poverty supplement payable to districts where the number of children in low income families residing in the district for the 1997 calendar year divided by the district's average daily membership for the 1997-1998 school year was greater than or equal to 10%; and (5) a minimum increase calculated by reference to the district's 1998-1999 market value/income aid ratio. *See* 24 P.S. § 25-2502.35, reprinted in Appendix E. In that same school year, the Commonwealth also paid an amount equal to $75.00 multiplied by the school district's average daily membership to each small and poor district which has an average daily membership of 1,500 or less and a market value/income aid ratio of 0.5000 or greater. 24 P.S. § 25-2502.13, reprinted in Appendix E.

school transportation), and 25-2509.5 (special education), 8329 (social security), and 8535 (retirement subsidies), reprinted in Appendix E.

Local Funding

In addition to funding public school education directly through the legislative enactments summarized above, the General Assembly of the Commonwealth also legislatively authorizes local governments to impose local taxes to fund the 501 public school districts in Pennsylvania. 24 P.S. §§ 6-601 to 6-695, reprinted in Appendix E. As the Pennsylvania Supreme Court held in *Danson v. Casey*, 399 A.2d 360, 367 (Pa. 1979), the legislative system for financing public education in Pennsylvania "endorsed the concept of local control to meet diverse local needs and took notice of the right of local communities to utilize local tax revenues to expand educational programs subsidized by the State."

The City and School District of Philadelphia, both plaintiffs in this action, have even greater local flexibility and discretion than Pennsylvania's 500 other school districts in terms of funding Philadelphia public schools. The City adopted home rule, including a 1965 supplement to the City of Philadelphia Home Rule Charter that created the School District of Philadelphia. 351 Pa. Code § 12.12-100, reprinted in Appendix F. Under its home rule powers and the special taxation privileges for public education granted to the City and School District of Philadelphia by the General Assembly, the School District of Philadelphia is authorized to levy not only real estate and net income taxes for public education, but also a special liquor sales tax as well as a realty use and occupancy tax. Philadelphia Municipal Code §§ 19-1801, 1804-1806, reprinted in Appendix G.

The District Court

Plaintiffs' complaint alleges the district court had jurisdiction to hear plaintiffs' case under 28 U.S.C.§1331, 28 U.S.C.§ 1343(a)(3) and (4), and 28 U.S.C.§2201 *et seq.* Appendix H, p. 210a, ¶ 32.

The district court found that a private cause of action existed under section 602 of Title VI, but dismissed the complaint under Rule 12(b)(6) because the plaintiffs had failed to allege a prima facie case of discriminatory impact under *Alexander v. Choate*, 469 U.S. 287 (1985). Appendix B, pp. 52a-54a (citations omitted).

The Court of Appeals

In an opinion dated August 25, 1999, the Third Circuit reversed the district court and remanded the case. It held that although the complaint was not always "precise" or "clear," plaintiffs had stated a claim under a Title VI regulation and 42 U.S.C. § 1983. Appendix A, p. 13a.

The Third Circuit decided three important federal questions that are the subject of this certiorari petition. First, the Third Circuit held that the Department of Education regulation at issue, which purported to restrain conduct having a discriminatory effect on protected classes, did not contravene Congressional intent or create substantive federal law. Second, following its earlier decision in *Chester Residents v. Seif*, the Third Circuit once again decided that Congress intended to create a private right of action under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI. In so holding, it acknowledged that this Court had not yet decided this issue. Finally, the court rejected, without discussion, this Court's holding in *Alexander v. Choate*, that broadly-worded regulations could not support a broad-ranging attack on an entire state legislative system in an area in which states traditionally possessed discretion.

A petition for writ of certiorari seeking review of the *Powell* decision was filed by certain defendant-intervenors on September 24, 1999. *Ryan, et al. v. Powell, et al.*, No. 99-527. These intervenors, state senators and representatives, are not federal fund recipients and therefore are not subject to Title VI. They intervened in the district court solely to support defendants.

REASONS FOR GRANTING THE WRIT

I. BY DECIDING THAT A DISCRIMINATORY EFFECT REGULATION PROMULGATED UNDER SECTION 602 OF TITLE VI IS VALID, THE THIRD CIRCUIT INCORRECTLY DECIDED AN IMPORTANT FEDERAL QUESTION THAT THIS COURT SHOULD DECIDE.

This Court should review the important question, which it has never squarely addressed, of whether a federal agency exceeds its rulemaking authority under Section 602 of Title VI by promulgating a regulation which incorporates a discriminatory effect standard, when the statutory authority under which the agency acts reaches only intentional discrimination.[4] While the Third Circuit acknowledged in *Powell* that this Court has "held that Title VI itself did not extend [so] far" as to prohibit disparate impact, Appendix A at 21a, the Third Circuit nonetheless erroneously found that administrative regulations promulgated under Section 602 of Title VI that prohibit disparate impact are valid. Other federal courts, in addition to the Third Circuit, erroneously have assumed that such regulations are valid, and many federal agencies have adopted regulations prohibiting disparate impact discrimination pursuant to Title VI. *See id.* at 9a, (noting that at least forty federal agencies have adopted regulations pursuant to Section 602 prohibiting discriminatory disparate impact and that at least five other federal courts of appeals have found that individual plaintiffs can bring disparate impact claims under Title VI regulations).

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4. This issue was raised below on the Brief of Appellees Jubelier, Ryan, Rhoads and Stairs at 50-52 and the Brief of Appellees at 35-38.

The holdings of *Powell* and other courts ignore the plain language of the statute, are based on a misreading of decisions of this Court, allow federal agencies to engage in improper rulemaking and require that this Court review this important issue. Absent review, federal agencies will continue improperly to promulgate and enforce invalid discriminatory effect regulations, and courts will continue to erroneously approve of such improper lawmaking by allowing claims and affording relief under such regulations.

A. The Statutes and the Regulation

Section 601 of Title VI, 42 U.S.C. § 2000d, provides that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Appendix C, p. 57a. Section 602 of Title VI provides that:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity...is authorized and directed to effectuate the provisions of Section 2000d [Section 601]...by issuing rules, regulations, or orders of general applicability.

Id. at 57a-58a.

The regulation at issue in this case was promulgated by the Department of Education "in exercising its statutory authority under Section 602" and is codified at 34 C.F.R. § 100.3(b)(2). Appendix A, p. 9a. That regulation prohibits a funding recipient from

> utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially

> impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

Appendix D (emphasis added).

Neither the Constitution nor the statute giving the Department of Education its rulemaking authority authorize discriminatory effect regulations. The Fourteenth Amendment prohibits only intentional discrimination and does not prohibit conduct resulting in a discriminatory effect. *Washington v. Davis*, 426 U.S. 229 (1976). Title VI, the underlying statutory authority pursuant to which the Department of Education acted in promulgating the regulation at issue, extends no further than the Fourteenth Amendment; thus, Title VI itself does not prohibit instances of discriminatory effect. *U.S. v. Fordice*, 505 U.S. 717, 732 n.7 (1992); *Guardians Ass'n v. Civil Service Com'n of City of New York*, 463 U.S. 582, 608 n.1 (1983) (Powell, J, concurring); *Regents of Univ. of California v. Bakke*, 438 U.S. 265, 284-87 (1978). Indeed, as the Third Circuit acknowledged in *Powell*, this Court has held that Section 601 of Title VI "prohibits *only* intentional discrimination." Appendix A, pp. 8a-9a (emphasis added) (citing *Guardians*).

B. The Misreading Of This Court's Precedents

In its vacated *Chester Residents* opinion, the Third Circuit noted that "[h]idden within the Court's statement [in *Fordice*] may be an indication that implementing regulations...that incorporate a discriminatory effect standard are invalid, because they extend further than the Fourteenth Amendment." *Chester Residents*, 132 F.3d at 931 n.9. However, as in *Chester Residents*, the Third Circuit in *Powell* ignored *Fordice* and instead misread *Guardians* and *Alexander v. Choate*, 469 U.S. 287 (1985) as holding that administrative regulations incorporating a disparate impact standard are valid. Appendix A, pp. 21a-22a.

Justice Powell correctly predicted that the opinions in *Guardians* "will further confuse rather than guide." *Guard-*

ians, 463 U.S. at 608 (Powell, J., concurring). Reviewing the important question of whether a federal agency exceeds its Section 602 rulemaking authority in promulgating discriminatory effect regulations will end the confusion. The Third Circuit and other courts are confused as to the holding of *Guardians*. For example the *Powell* panel stated that "five of the nine justices [in *Guardians*] *agreed* that the administrative regulations incorporating a disparate impact standard are valid." Appendix A, p. 21a (emphasis added). An examination of the *Guardians* opinion, however, reveals that no opinion garnered a majority. *See Alexander*, 469 U.S. at 293. Moreover, comments by Justices White, Blackmun, Brennan, Stevens and Marshall, four of whom wrote in dissent, regarding validity of discriminatory effect regulations were dicta[5] and did not impact the Court's holding that affirmed the Second Circuit's determination that the plaintiffs were limited to noncompensatory prospective relief under Title VI and its regulations. Thus, the issue in Guardians was whether there is a cause of action for compensatory damages for allegations of discriminatory effect under either Title VI or agency regulations. The Court held that there is no such cause of action. The Court did not "hold" that discriminatory effect regulations are valid.

Moreover, four justices in *Guardians*, each of whom concurred in the judgment, stated to the contrary – that discriminatory effect regulations are *not* a valid exercise of agency authority.[6] *Guardians*, 463 U.S. at 611, n.5 (Powell, J., concur-

5. Indeed, in *Bakke*, Justices Brennan, White and Marshall agreed that "[n]owhere is there any suggestion that Title VI was intended to terminate federal funding for any reason other than consideration of race or national origin by the recipient institution in an manner inconsistent with the standards incorporated in the Constitution." *Bakke*, 438 U.S. at 332. As Justice Powell pointed out in *Guardians*, "[i]f nowhere' is there any evidence that Congress intended the Title VI standard to differ from the constitutional standard, clearly an agencyn interpretation to the contrary is entitled to no deference." *Guardians*, 463 U.S. at 611 n.5 (Powell, J., concurring).

6. The concurring Justices noted that to the extent this Court tacitly approved liability under Title VI for conduct having only a discriminatory impact in *Lau v. Nichols*, 414 U.S. 563 (1974), that holding was incorrect and was impliedly overruled by the Court in *Bakke*, *Guardians*, 463 U.S. at 611

ring in judgment and joined by Burger, C.J.); *id.* at 612 (Rehnquist, *J., concurring in judgment* and joining Part II of Powell's opinion); *id.* at 614-15 (O'Connor, J., concurring in judgment). For example, Justice Powell stated that "[a]dministrative agencies do not have - and should not have - such lawmaking power." Id. at 611 n.5. Justice O'Connor reasoned that, since proof of purposeful discrimination is a necessary element of a valid Title VI claim, "*regulations imposing an impact standard are not valid.*" *Guardians*, 463 U.S. at 612 (O'Connor, J., concurring) (emphasis added). Justice O'Connor further stated that:

> ...it is difficult to fathom how the Court could uphold administrative regulations that would proscribe conduct by the recipient having only a discriminatory effect. Such regulations do not simply "further" the purpose of Title VI; they go well beyond that purpose.

Guardians, 463 U.S. at 613 (O'Connor, J., concurring).

The Third Circuit's reliance upon *Alexander* is similarly misguided and further demonstrates the confusion in the federal courts of appeals necessitating review by this Court. In *Alexander*, plaintiffs, Medicaid recipients, challenged the state's reduction in the number of inpatient hospital days for which the state's Medicaid program would pay, claiming the reduction had a discriminatory effect on the handicapped and violated the Rehabilitation Act and its implementing regulations. This Court held that such claims were not cognizable under that Act or its regulations. In addition, Justice Marshall's incorrect characterization of *Guardians*, which the Third Circuit offered in support of its decision, was pure dicta and did not relate to the resolution of *Alexander*. The holding of *Alexander*, that the plaintiffs had not established a prima facie violation of Section 504 of the Rehabilitation Act, did

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NOTES *(Continued)*

n.4 (Powell, J., concurring in judgment and joined by Burger, C.J. and Rehnquist, J.) and 463 U.S. at 615 (O'Connor, J., concurring in judgment).

not involve the issue of whether discriminatory effect regulations thereunder are valid; and, therefore, the Third Circuit improperly relied on the case.

C. Improper Agency Rulemaking

Administrative agencies should not be permitted to continue to usurp the power of Congress and effectively create substantive law through regulations which exceed the specific reach of Title VI's prohibitions.

In *Powell*, the Third Circuit found discriminatory effect regulations to be valid despite recognizing that such regulations "go further than [the] statute." Appendix A, p. 22a. As this Court pointed out in *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, *rehearing denied*, 425 U.S. 986 (1976):

> [T]he rulemaking power granted to an administrative agency charged with the administration of a federal statute is *not the power to make law*. Rather, it is "the power to adopt regulations to carry into effect the will of Congress as expressed by the statute."

425 U.S. at 213-14 (emphasis added).

There is nothing in the language of Title VI to suggest an intent or "will of Congress" to reach anything other than intentional discrimination. As Justice O'Connor opined in *Guardians*, a discriminatory effect regulation exceeds statutory authority because the language and history of the statute, as well as the Supreme Court's application of it, dictate a proscription of only intentional discrimination. Justice O'Connor reasoned as follows:

> An administrative agency is itself a creature of statute. Although the Court has stated that an agency's legislative regulations will be upheld if they are "reasonably related" to the purposes of the enabling statute, Mourning v. Family Publications Service, Inc., 411 U.S. 356, 369 (1973), we would expand considerably the discretion and power of agencies were we to

> interpret "reasonably related" to permit agencies to proscribe conduct that Congress did not intend to prohibit. "Reasonably related to" simply cannot mean "inconsistent with." Yet that would be the effect of upholding the administrative regulations at issue in this case if, as five Justices concluded in Bakke, the expressed will of Congress is that federal funds recipients are prohibited only from purposefully discriminating on the grounds of race, color, or national origin in the administration of funded programs.

Guardians, 463 U.S. at 614 (O'Connor, J., concurring).

In promulgating discriminatory effect regulations, federal agencies such as the Department of Education have outlawed otherwise lawful conduct and thereby have made fundamental policy determinations that are for Congress to make. If the "will of Congress" to which Justice O'Connor referred in *Guardians* were to prohibit disparate impact, then Congress would have so provided. It did not. This policy choice cannot and should not be usurped by administrative agencies. *See Industrial Union Dep't, AFL-CIO v. Am. Petroleum Institute*, 448 U.S. 607, 685-86 (1980) (Rehnquist, J., concurring) (noting that nondelegation doctrine ensures that important social policies are made by Congress).

This Court should grant review of the Third Circuit's decision in order to correct a serious error in the interpretation and application of Title VI and this Court's precedents.

II. EVEN IF THE REGULATION AT ISSUE, WHICH INCORPORATES A DISPARATE IMPACT STANDARD UNDER TITLE VI, IS VALID, THE COURT SHOULD DECIDE THE IMPORTANT QUESTION OF WHETHER A PRIVATE RIGHT OF ACTION EXISTS TO ENFORCE DISCRIMINATORY EFFECT REGULATIONS

Assuming a regulation which incorporates a disparate impact standard were valid, an additional important question is whether a private right of action exists to enforce such a regulation. This Court should decide whether a private right of action exists under discriminatory effect regulations promulgated by federal administrative agencies pursuant to Section 602 of Title VI for two principal reasons. First, this Court granted certiorari on this issue in *Chester Residents*, but never reached the issue because the underlying judgment was vacated as moot.[7] Thus, this important question remains undecided. Appendix A, p. 17a. Second, the Third Circuit's resolution of the issue completely undermines the Title VI enforcement scheme intended by Congress. Given the proliferation of discriminatory effect regulations, the *Powell* decision is destined to have far-reaching implications for the entire federal system that were never authorized by Congress. For these reasons and the reasons discussed more fully herein, the Court should grant review of this important issue.

A. The Impact of *Powell* is Far-Reaching

Many federal agencies have adopted regulations prohibiting disparate impact discrimination pursuant to Title VI and various courts have assumed, without directly deciding the issue, that there is a private right of action to enforce those regulations. *See, e.g., Castenada by Castenada v. Pickard*, 781 F.2d 456 (5th Cir. 1986); *Buchanan v. City of Bolivar, Tenn.*, 99

7. On June 8, 1998, this Court granted the Petition for Writ of Certiorari in *Chester Residents* on this very issue, but on August 17, 1998 vacated the judgment of the Court of Appeals as moot. In *Powell*, the Third Circuit relied upon its analysis in *Chester Residents* in finding that a private right of action exists under discriminatory effect regulations.

F.3d 1352 (6th Cir. 1996); *David K. v. Lane*, 839 F.2d 1265 (7th Cir. 1988); *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984); *Villaneuva v. Carere*, 85 F.3d 481 (10th Cir. 1996); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985); *African Am. Legal Defense Fund, Inc. v. N.Y. State Dep't of Educ.*, 8 F.Supp.2d 330 (S.D.N.Y. 1998); *Campaign for Fiscal Equity, Inc. v. New York*, 655 N.E.2d 661 (N.Y. 1995).[8] However, the Third Circuit's decision in *Powell* is the only federal court of appeals decision to expressly hold that a private right of action exists to enforce disparate impact regulations under Section 602. This decision reopens the invitation, initially issued by the Third Circuit in *Chester Residents*, to federal litigation by private parties against state or local government agencies which receive federal funds. Under the Third Circuit's construction of Title VI, any person or entity displeased with treatment by a state or local agency can simply bypass the federal agency process set up by Congress and seek direct federal court redress for violations of agency regulations.

As discussed in detail below, such a scheme is completely at odds with the system set up by Congress to address discrimination by entities receiving federal funds. The Third Circuit's improper finding of a private right of action to enforce agency regulations promulgated under Section 602 will, contrary to the intent of Congress, require federal courts to become enforcers of regulations without the benefit of the administrative framework that Congress designed to deal with such regulations. Federal courts do not have the expertise to do so, Congress did not intend them to do so, and they should not be forced to do so by an improper ruling of a federal court of appeals. The implications of this decision are wide ranging and will impact all state and local governments, thereby warranting this Court's immediate review.

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8. At least one district court has determined that disparate impact regulations cannot support a private action. *New York City Environmental Justice Alliance v. Giuliani*, 50 F. Supp 2d 250 (S.D.N.Y. 1999).

B. This Court Granted Certiorari On The Same Issue In *Chester Residents*

On June 8, 1998, this Court granted certiorari in *Chester Residents*. *Chester Residents*, 118 S.Ct. 2296. The petition upon which certiorari was granted in *Chester Residents*, like the petition here, requested this Court to decide whether Congress intended to create a private cause of action under Section 602 of Title VI in favor of any person or entity which alleged a discriminatory effect in the administration of programs and activities of a federally funded state or local agency. Thus, *Chester Residents* and *Powell* present identical issues. As the Third Circuit noted in *Powell*:

> In *Chester Residents*, 132 F.3d at 927, a decision that has since been vacated as moot, this Court considered the issue before us here, "whether a private right of action exists under discriminatory effect regulations promulgated by federal administrative agencies pursuant to Section 602 of Title VI."

Appendix A, p. 17a. The *Powell* court went on to note that "...the Supreme Court never directly addressed the issue" and that the Third Circuit has "...found no direct authority confirming or denying a private right of action under the Title VI regulation." *Id.* This issue is still as important today as it was a year ago when this Court granted certiorari in *Chester Residents* and is an issue this Court would have reached in *Chester Residents* had that action not been rendered moot.

C. The Third Circuit Improperly Interpreted Section 602

Review by this Court is necessary to ensure that the administrative system set up by Congress for addressing discrimination by federal funds recipients is not rendered meaningless by judicial activism. In *Powell*, the Third Circuit applied its analysis from *Angelastro v. Prudential-Bache Securities, Inc.*, 764 F.2d 939 (3d Cir. 1985) to determine that there is an implied private right of action to enforce discriminatory effect regulations promulgated by federal administrative agencies pursuant to Section 602. Appendix A, pp. 16a-20a. The

Third Circuit applied these factors in a manner that improperly read Section 602 of Title VI by creating a private right of action where none was intended.

The *Angelastro* analysis asks: (1) whether a private right of action exists under the statute under which the regulation was promulgated; (2) whether the agency regulation is properly within the scope of the enabling statute[9]; and (3) whether implying a private right of action will further the purposes of the enabling statute. Appendix A, pp. 17a-18a.

1. The Statutory Language and Structure Evidences Congress' Intent Not to Provide for a Private Right of Action to Enforce Regulations Promulgated Under Section 602

The Third Circuit incorrectly resolved the first prong of the *Angelastro* test and in so doing improperly supplanted the administrative scheme established by Congress. In *Chester Residents*, the Third Circuit applied this Court's analysis in *Cort v. Ash*, 422 U.S. 66 (1975) to Section 602 of Title VI in resolving the first prong of the *Angelastro* analysis.[10] In *Powell*, the Third Circuit dismissed such a resolution of the first *Angelastro* factor as "circuitous." Appendix A, p. 19a.

Instead, the Court reasoned that although the rule [34 C.F.R. § 100.3(b)(2)] was promulgated under Section 602, that section "implements" Section 601, and since Section 601 of Title VI gives rise to an implied right of action to enforce intentional violations of Title VI, regulations under Section 602, which are promulgated to "effectuate" the provisions of

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9. Because the discriminatory effect regulation at issue is not within the scope of the enabling statute, the second prong of the *Angelastro* analysis is not met. *See* supra at Section I.

10. The *Cort* analysis asks (1) is the plaintiff one of the class for whose especial benefit the statute was enacted; (2) is there any indication of congressional intent to deny or create a private remedy; (3) is the implication of a private remedy consistent with the purposes of the legislative scheme and (4) is the cause of action traditionally relegated to state law. *Cort*, 422 U.S. at 78. The second question regarding Congressional intent is the "ultimate issue". *Touche Ross & Co. v. Redington*, 422 U.S. 560, 575-76 (1979).

Section 601, also must give rise to a private right of action. Appendix A, p. 20a. This transitive reasoning essentially eviscerates Section 602 by transplanting the implied right of action for intentional discrimination under Section 601 into discriminatory effect regulations under Section 602, despite the fact that the plain statutory text, congressional intent and applicable precedents are to the contrary.

The plain language of Section 602 indicates that no private right of action was intended. In determining congressional intent, the starting point is always the language of the statute. *Touche Ross & Co. v. Redington*, 442 U.S. 560, 575-76 (1979); *Ernst & Ernst*, 425 U.S. at 197, 200-01. The language and structure of Section 602 do not create any privately enforceable rights and, indeed, do not create any substantive rights at all. Rather, Section 602 directs agencies that provide federal funding to issue rules, regulations and orders of general applicability to effectuate the provisions of Section 601. Appendix C, p. 57a. Limitations on such agency regulations include consistency with the purposes of the statute authorizing federal financial assistance and approval by the President. *Id.* Section 602 authorizes federal agencies to enforce their regulations through termination or denial of federal funds or by any other means authorized by law. *Id.*[11] No action, however, can be taken to enforce regulations under Section 602

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11. The only remedy expressly provided by Section 602 is the termination of federal funding by the promulgating agency. On enforcement Section 602 provides:

> *Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance* under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and, shall be limited in its effect to the particular program, or part thereof, in which such non-compliance has been so found, *or* (2) *by any other means authorized by law;*

Appendix C, pp. 57a-58a (emphasis added).

until the agency has determined that a regulation has been violated, informed the recipient of federal funds of its failure to comply with the regulation and determined that it is not possible to obtain voluntary compliance with the regulation.[12]

Thus, the congressional intent in Section 602 is plain on the face of the statute — Congress intended that federal agencies, not private plaintiffs, enforce regulations promulgated under Section 602. In light of this detailed structure which provides for enforcement by the federal government, not private plaintiffs, "it is highly improbable that 'Congress absentmindedly forgot to mention an intended private action.'" *Transamerica Mortgage Advisors v. Lewis*, 444 U.S. 11, 20 (1979). Where, as here, a "statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989). When the court finds "the terms of a statute unambiguous, judicial inquiry is complete, except in 'rare and exceptional cases.'" *Garcia v. United States*, 469 U.S. 70, 75 (1984), rehearing den., 469 U.S. 1230 (1985). *See* Appendix A, p. 18a ("If under *Cort v. Ash* and its progeny, a court finds that Congress did not intend the statute to be enforced by private actions, then the inquiry is concluded."). The language of the

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12. Any enforcement of Section 602 regulations is restricted as follows:

> *Provided, however,*
> That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Appendix C, p. 58a (emphasis in statute).

statute should have concluded the inquiry against the existence of a private right of action to enforce agency regulations under Title VI. It did not. Thus, the Third Circuit's decision should be reviewed by this Court because, in holding a private right of action exists under Section 602 regulations, the Third Circuit improperly eliminated procedures put in place by Congress.

Moreover, a private right of action to enforce agency regulations undermines the purposes of Section 602; and, thus, the third prong of the *Angelastro* analysis also is not met. Congress decided to effect enforcement of Title VI at the administrative level through agency procedures. A private right of action under Title VI regulations would allow a private plaintiff to use the tools provided by Congress to bring about compliance with Title VI regulations without any regard for the congressional preconditions and safeguards created for the use of those tools. Enforcement of agency regulations should be left to the expertise, judgment and special procedures promulgated by the agency at issue, in this case the Department of Education. The Third Circuit erroneously reasoned that a private right of action will increase enforcement and that "...such increased enforcement will further Title VI's purposes, compensating for the agency's lack of sufficient resources to adequately enforce the regulation itself." Appendix A, p. 18a.

In so holding, the Third Circuit acknowledged that it was displacing Congress' intent to have the agency enforce the regulations at issue with the Court's will that private parties do so. The Court second-guessed Congress' policy decision and imposed its own. This undermines the congressional goal of providing preconditions and safeguards on the enforcement of expansive discriminatory effect regulations and defeats, rather than furthers, the purpose of the enabling statute.

2. This Court's Precedents Suggest There Is No Private Right Of Action To Enforce Title VI Regulations

As the Third Circuit noted in *Powell*, this Court has never directly addressed the important question of whether a private right of action exists to enforce discriminatory effect regulations. Appendix A, p. 17a. In *Guardians*, no interpretation of Title VI with respect to the issue obtained a majority of the court. Thus, the Third Circuit was without direct guidance as to whether private plaintiffs can maintain an action against a state agency based upon the discriminatory effect regulations of the Department of Education.

However, this Court has suggested that no private right of action exists to enforce Title VI regulations. In acknowledging the administrative structure established by Congress in Title VI, this Court in *Alexander* commented on its *Guardians* opinion as follows:

> In essence, then, we held that *Title VI had delegated to the agencies in the first instance the complex determination* of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts.

Alexander, 469 U.S. at 294 (emphasis added).

Finally, as noted herein, this Court has found that Title VI itself prohibits only intentional discrimination and, by implication, authorizes a private right of action for violations of the statute. Such implied actions are "limited by the discriminatory intent standard required to prove violations of Title VI." *Guardians*, 463 U.S. at 608 n.1 (Opinion of Powell, J.); *see Fordice*, 505 U.S. at 732 n.7 (noting that Title VI's protection extends no further than the Fourteenth Amendment).

Thus, it is clear from the plain text of Section 602 and this Court's precedents that Congress "delegated to the agencies in the first instance" the enforcement of agency regulations and

that it did not intend for there to be a right of action under which private plaintiffs could assert alleged violations of Title VI regulations.

III. BY APPROVING THE USE OF A GENERALLY WORDED REGULATION PROMULGATED BY THE DEPARTMENT OF EDUCATION UNDER TITLE VI AS A VEHICLE FOR ATTACKING THE COMMONWEALTH OF PENNSYLVANIA LEGISLATIVE SYSTEM FOR FUNDING PUBLIC EDUCATION, THE THIRD CIRCUIT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY WHICH CONFLICTS WITH THIS COURT'S DECISION IN *ALEXANDER V. CHOATE*

As the Third Circuit recognized, this action challenges under a single, generally worded regulation of the United States Department of Education the entire legislative system of the Commonwealth of Pennsylvania for funding public education, claiming that it has a racially discriminatory effect. Appendix A, pp. 6a, 9a. Since the Pennsylvania system is the same or similar to that of other states, authorization of attacks on that system under a generally worded regulation encourages such attacks in other states, as has already occurred in New York and Arizona.[13] As this Court noted of similar attacks on public education funding systems in *San Antonio Independent School District v. Rodriguez:*

> ...it would be difficult to imagine a case having a greater potential impact on our federal system than the one now before us, in which we are urged to abrogate systems of financing public education presently in existence in virtually every State.

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13. This action is the fourth reported case utilizing the Title VI regulation to attack a state legislative public school funding system. *See Campaign For Fiscal Equity, Inc. v. New York*, 655 N.E.2d 661, 669-671 (N.Y. 1995); *African American Legal Defense Fund, Inc. v. New York State Department of Education*, 8 F.Supp.2d 330, 337-339 (S.D.N.Y. 1998); *Flores v. State of Arizona*, 48 F.Supp.2d 937, 939, 953-954 (D. Ariz. 1999).

441 U.S. 1, 44, *rehearing den.*, 411 U.S. 959 (1973).

The regulation which forms the basis for this suit was promulgated by the Department of Education under Section 602 of Title VI of the Civil Rights Act of 1964. It prohibits a recipient of federal educational funds from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the program as respects individuals of a particular race, color, or national origin." Appendix D.

This regulation of the Department of Education closely mirrors a regulation promulgated under Section 504 of the Rehabilitation Act of 1973, which was before this Court in *Alexander v. Choate*, 469 U.S. 287 (1985). In *Alexander*, after noting its agreement with the petitioner's premise that Section 504 was modeled in part on Title VI, 469 U.S. at 293 n.7, this Court unanimously held that the regulations relied upon by Medicaid recipients in that case to challenge the State of Tennessee's reduction of the number of covered annual days of in-patient hospital care "do not in fact support respondents' action," 469 U.S. at 294 n.10, and that "generally worded regulations" are insufficient to support broad-based attacks upon state legislative actions in areas of traditional state discretion. This Court specifically concluded that:

> Before we would find that these generally worded regulations were intended to limit a State's long-standing discretion to set otherwise reasonable Medicaid coverage rules, that intent would have to be indicated with greater specificity in the regulations themselves or through other agency action.

469 U.S. at 307 n.32.

Alexander involved several generally worded regulations, one of which was virtually identical to the single regulation

relied upon as the basis for this action.[14] Moreover, just as the State of Tennessee was recognized by this Court to have "longstanding discretion to set otherwise reasonable Medicaid coverage rules," 469 U.S. at 307 n.32, so too here sovereign states, such as the Commonwealth of Pennsylvania, have long been recognized to have discretion in the area of establishing a system for funding their public schools. As this Court stated in *Rodriguez*, public school funding is "an area in which [this Court] has traditionally deferred to state legislatures," specifically noting that the Court "lack[s] both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues," as it relates to state public school funding issues. 411 U.S. at 40, 41.[15] Indeed, this Court concluded in *Rodriguez* that:

> The consideration and initiation of fundamental reforms with respect to state taxation and education are matters reserved for the legislative processes of the various States, and we do no violence to the values of federalism and separation of powers by staying our hand.

Id. at 58.

The approach taken by this Court in *Alexander* and *Rodriguez* is consistent with its longstanding recognition that the

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14. *See Alexander*, 469 U.S. at 304-305 (noting that one of the regulations relied upon prohibited "a recipient of federal funding from adopting 'criteria or methods of administration that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to the handicapped.'")

15. The importance of public school funding to the sovereign interests of the Commonwealth of Pennsylvania is made even more manifest by the Pennsylvania Constitution, which mandates the General Assembly to provide for a "thorough and efficient system of public education" in the Commonwealth. Pa.Const. Article III, § 14. *See Marrero v. Commonwealth*, 709 A.2d 956 (Pa. Cmwlth.), *appeal pending*, No. 0032 M.D. Appeal Dkt. 1998 (Pa. 1998).

States "retain substantial sovereign authority under our constitutional system." *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Federal courts have, therefore, been enjoined by this Court to be certain of Congress' intent before finding that federal law overrides the constitutional balance between the federal and state governments. *Id.* at 460. This Court has further held that "Congress should make its intention 'clear and manifest' if it intends to pre-empt the historic powers of the States," since "the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision." *Id.* at 461.

While Petitioners raised this issue as their first point in arguing for affirmance of the district court's dismissal of the complaint in their appellate brief in the Third Circuit, the Court of Appeals simply ignored this fundamental issue of whether the regulation which formed the sole basis for this suit could support this action, and did not address it in its opinion.

The wisdom of *Alexander's* recognition that "generally worded regulations" are insufficient to evince a determination that matters traditionally committed to the States have been taken away from them is demonstrated by the United States' Amicus Brief in the district court in this action. That brief suggested that a federal court, under the generally worded regulation relied upon in the complaint, "may" be able to rewrite state school funding legislation based upon "the demands on social services in addition to education on an urban area's tax base, the 'buying power' of the education dollar in an urban school district, or the special education and physical plant needs that must be addressed in such a district." Appendix I.

The generally worded regulation relied upon in the complaint gives no basis for a federal court reasonably to conclude that Congress meant to vest it with the power to rewrite a state's legislative system for public school funding in favor of certain urban school districts based upon such factors. As

detailed above, the Pennsylvania public school funding formula provides for both local and state funds, and considers many factors. For the state BEF component, these include school district wealth (measured by market value of real estate and personal income), school district residents' poverty and student population growth. Additional funding is granted under the state formula to school districts such as Philadelphia where the poverty rate is high or where student population has increased. Additional funding is also granted to poor and small districts. For the local component, the local taxing authorities and school districts (including the City of Philadelphia, a Plaintiff in this action) are free to impose such taxes for public education as are felt desirable at the local level to provide appropriate educational opportunities.

Moreover, the use of federal regulations to rewrite a legislatively-created mechanism for raising tax revenues in support of local school districts raises serious federalism concerns. Plaintiffs' allegations of disparities in total revenues represent an attack on the local funding component of Pennsylvania's entire system of funding its schools. By permitting all of plaintiffs' claims to go forward, the Third Circuit's decision not only authorizes an attack on the legislative formula that allocates state funds, but also sanctions a challenge to the fundamental premise of the funding system: that state funds are to be combined with local and other revenues to finance public education. Appendix A, p. 13a, n.2; and *id.* at pp. 16a, 22a; *see also Danson*, 399 A.2d at 367 (quoted *supra* at 7). Under the Third Circuit's reasoning, plaintiffs may use a generally-worded regulation not only to attack the allocation of state monies, but also to attempt to dismantle the system of local control over school funding. One of the plaintiffs, the School District of Philadelphia, could use such federal regulations to escape completely its obligation to raise local revenues to support its schools, instead thrusting this responsibility completely onto the state. Such a result threatens to turn the federalist system on its head.

Permitting a federal court to enjoin further use of Pennsylvania's multifactor funding formula, which weighs competing interests with which courts are institutionally unfamiliar, and which is based on both local and statewide legislative enactments, eviscerates *Alexander* and is inconsistent with the teachings of *Gregory*. For this reason, and because this precedent encourages additional unfounded attacks on other state public school funding systems, this Court should grant certiorari to review this important federal question under Title VI.

CONCLUSION

For each of the foregoing reasons, petitioners respectfully request that this Court grant their petition for writ of certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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IN THE

Supreme Court of the United States

THOMAS RIDGE, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, ET AL.,
Petitioners,

v.

DAVID POWELL, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX A

Filed August 25, 1999

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 98-2096

DAVID POWELL; SHELEAN PARKS; PATRICE EVERAGE; JULIA A. DAVIS; YVETTE BLAND; GERALDINE NEWTON; MARIA M. RIVERA; MARY E. MILLER; GREGORY LUZAK; CATHERINE LUZAK; FU-ZHEN XIE; THE BLACK CLERGY OF PHILADELPHIA AND VICINITY; PHILADELPHIA BRANCH NAACP; ASPIRA, INC. OF PENNSYLVANIA; PARENTS UNION FOR PUBLIC SCHOOLS; CITIZENS COMMITTEE ON PUBLIC EDUCATION IN PHILADELPHIA; PARENTS UNITED FOR BETTER SCHOOLS; DAVID W. HORNBECK, SUPERINTENDENT, The School District of Philadelphia; FLOYD W. ALSTON, PRESIDENT, Board of Education of the School District of Philadelphia; BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF PHILADELPHIA; THE SCHOOL DISTRICT OF PHILADELPHIA; EDWARD G. RENDELL, MAYOR, City of Philadelphia; CITY OF PHILADELPHIA

PHILADELPHIA FEDERATION OF TEACHERS LOCAL 3; TED KIRSCH, PRESIDENT, GUARDIAN AD LITEM,
Intervenors in D.C.

v.

THOMAS J. RIDGE, Governor of the Commonwealth of Pennsylvania; JAMES P. GALLAGHER, CHAIRPERSON, Commonwealth of Pennsylvania State Board of Education; EUGENE W. HICKOK, SECRETARY OF EDUCATION; BARBARA HAFER, TREASURER

MATTHEW J. RYAN; ROBERT C. JUBELIRER; JESS M. STAIRS; JAMES J. RHOADES,
Intervenors in D.C.

DAVID POWELL; SHELEAN PARKS; PATRICE EVERAGE; JULIA A. DAVIS; YVETTE BLAND; GERALDINE NEWTON; MARIA M. RIVERA; MARY E. MILLER; GREGORY LUZAK; CATHERINE LUZAK; FU-ZHEN XIE; THE BLACK CLERGY OF PHILADELPHIA AND VICINITY; PHILADELPHIA BRANCH NAACP; ASPIRA, INC. OF PENNSYLVANIA; PARENTS UNION FOR PUBLIC SCHOOLS; CITIZENS COMMITTEE ON PUBLIC EDUCATION IN PHILADELPHIA; PARENTS UNITED FOR BETTER SCHOOLS; DAVID W. HORNBECK; FLOYD W. ALSTON; BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF PHILADELPHIA; THE SCHOOL DISTRICT OF PHILADELPHIA; EDWARD G. RENDELL; CITY OF PHILADELPHIA,

Appellants

No. 98-2157

DAVID POWELL; SHELEAN PARKS; PATRICE EVERAGE; JULIA A. DAVIS; YVETTE BLAND; GERALDINE NEWTON; MARIA M. RIVERA; MARY E. MILLER; GREGORY LUZAK; CATHERINE LUZAK; FU-ZHEN XIE; THE BLACK CLERGY OF PHILADELPHIA AND VICINITY; PHILADELPHIA BRANCH NAACP; ASPIRA, INC. OF PENNSYLVANIA; PARENTS UNION FOR PUBLIC SCHOOLS; CITIZENS COMMITTEE ON PUBLIC EDUCATION IN PHILADELPHIA; PARENTS UNITED FOR BETTER SCHOOLS, INC.; DAVID W. HORNBECK, SUPERINTENDENT, The School District of Philadelphia; FLOYD W. ALSTON, PRESIDENT, Board of Education of the School District of Philadelphia; BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF PHILADELPHIA; THE SCHOOL DISTRICT OF PHILADELPHIA; EDWARD G. RENDELL, MAYOR, City of Philadelphia; CITY OF PHILADELPHIA

PHILADELPHIA FEDERATION OF TEACHERS LOCAL 3; TED KIRSCH, PRESIDENT, GUARDIAN AD LITEM,

Intervenors in D.C.,

Appellants

v.

THOMAS RIDGE, Governor of the Commonwealth of Pennsylvania; JAMES P. GALLAGHER, Chairperson Commonwealth of Pennsylvania State Board of Education; EUGENE W. HICKOK, Secretary of Education; BARBARA HAFER, Treasurer

MATTHEW J. RYAN; ROBERT C. JUBELIRER; JESS M. STAIRS; JAMES J. RHOADES,
Intervenors in D.C.

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D. C. No. 98-cv-01223)
District Judge: Hon. Herbert J. Hutton

Argued June 9, 1999

Before: SLOVITER and MANSMANN, *Circuit Judges*
and WARD, District Judge*

(Filed: August 25, 1999)

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* Hon. Robert J. Ward, United States District Judge for the Southern District of New York, sitting by designation.

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OPINION OF THE COURT

SLOVITER, *Circuit Judge.*

Before us is an appeal by plaintiffs, including eleven parents of children who attend public schools in Philadelphia suing on their own behalf and that of their children (hereafter "school children"), from the order of the United States District Court for the Eastern District of Pennsylvania dismissing their complaint under Federal Rule of Civil Procedure 12. The complaint challenges the practices of the Commonwealth of Pennsylvania in funding public education as having a racially discriminatory effect. This appeal requires us to consider whether a private plaintiff may state a claim under a regulation implementing Title VI, whether the complaint adequately states a claim under that regulation, and whether a claim may be maintained under 42 U.S.C. § 1983 for violation of that regulation.

I.

On March 9, 1998, a diverse group of plaintiffs filed suit against several Pennsylvania officials, alleging in Count I the violation of the regulation the Department of Education (DOE) adopted to implement Title VI of the Civil Rights Act of 1964, and in Count II a violation of 42 U.S.C. § 1983. The parents of several Philadelphia public school children were joined as plaintiffs by the following six organizations that devote substantial resources to overcoming what they allege are the disparate and inadequate educational programs caused by the challenged practices: (1) The Black Clergy of Philadelphia and Vicinity; (2) Philadelphia Branch NAACP; (3) ASPIRA, Inc. of Pennsylvania; (4) Parents Union of Public Schools; (5) Citizens Committee on Public Education in Philadelphia; and (6) Parents United for Better Schools. Also joining as plaintiffs were several local officials and entities: (1) the School District of Philadelphia; (2) its superintendent, David W. Hornbeck; (3) its Board of Education; (4) the Board's president, Floyd W. Alston; (5) the City of Philadelphia; and (6) the City's mayor, Edward

G. Rendell. These original plaintiffs were later joined without objection by intervenors the Philadelphia Federation of Teachers Local 3 AFT AFL-CIO, and Ted Kirsch as Guardian ad Litem.

The complaint names as defendants four state employees in their "official and individual capacities": Thomas J. Ridge, Governor of the Commonwealth of Pennsylvania; Dr. James P. Gallagher, Chairperson of the Board of Education of the Commonwealth of Pennsylvania; Dr. Eugene W. Hickok, Secretary of Education; and Barbara Hafer, Treasurer, (the "executive defendants"). Four Commonwealth legislative leaders, Representative Matthew J. Ryan, Senator Robert C. Jubelirer, Representative Jess M. Stairs, and Senator James J. Rhoades, joined as intervenor defendants ("legislative defendants").

All of the plaintiffs seek two forms of relief: (1) "a declaration that the defendants 'through their funding policies and practices, discriminate against African-American, Hispanic, Asian and other minority students in the School District and the City' " in violation of the administrative regulation promulgated under Title VI and (2) "an injunction prohibiting defendants prospectively 'from continuing to implement a system of funding public schools that discriminates against . . . minority children enrolled in' the School District 'and that thereby harms' all plaintiffs." Appellants' Br. at 16. The school children and organizations also seek "a declaration that [the] funding policies and practices deprive them of the rights, privileges and immunities secured by the laws of the United States, in violation of § 1983." Appellants' Br. at 16.

On May 4, 1998, the original defendants filed a motion to dismiss the complaint under Rule 12(b)(6). In June, the United States filed a brief amicus curiae in support of the plaintiffs. On July 6, 1998, the intervening defendants also filed a Rule 12(b)(6) motion to dismiss. The United States then filed a second brief amicus curiae.

The original defendants and the intervening defendants each filed a second motion to dismiss after the Supreme Court dismissed its grant of certiorari in *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925 (3d Cir.

1997), *vacated as moot*, 119 S. Ct. 22 (1998). Certiorari had been sought on this court's holding in *Chester Residents* that an implied private right of action exists under the regulations promulgated under Title VI. In response to the four motions to dismiss, plaintiffs requested oral argument and/or a status conference, and the United States notified the District Court that it intended to file an additional amicus brief addressing the *Chester Residents* decision. The District Court, however, dismissed the complaint for failure to state a claim without holding the requested status conference, hearing oral argument, or waiting to receive the government's third amicus brief.

Our review of a district court's dismissal of a complaint is plenary. *See Moore v. Tartler*, 986 F.2d 682, 685 (3d Cir. 1993). We apply the same test the district court should have used initially. *See Holder v. City of Allentown*, 987 F.2d 188, 193 (3d Cir. 1993). We will not uphold a dismissal for failure to state a claim if, "under any reasonable reading of the pleadings, plaintiff may be entitled to relief." *Id.* at 194. In reviewing the plaintiff's complaint, "[w]e are required to 'accept as true the facts alleged . . . and all inferences that can be drawn therefrom.'" *D.R. by L.R. v. Middle Bucks Area Vocational Technical Sch.*, 972 F.2d 1364, 1367 (3d Cir. 1992) (en banc) (quoting *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990)).

II.

Section 601 of Title VI of the Civil Rights Act of 1964 provides:

> No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d. The Supreme Court has held that section 601 of Title VI prohibiting exclusion or discrimination from federal programs on account of race, color or national origin prohibits only intentional

discrimination. *See Guardians Ass'n v. Civil Service Comm'n*, 463 U.S. 582 (1983).

However, another provision of Title VI, section 602, "authorize[s] and direct[s]" federal departments and agencies that extend federal financial assistance to particular programs or activities "to effectuate the provisions of section 2000d [section 601] . . . by issuing rules, regulations, or orders of general applicability." 42 U.S.C. § 2000d-1. At least 40 federal agencies have adopted regulations that prohibit disparate-impact discrimination pursuant to this authority. *See Guardians*, 463 U.S. at 619 (Marshall, J. dissenting).

The Department of Education, in exercising its statutory authority under section 602, promulgated such a regulation, codified as 34 C.F.R. § 100.3(b)(2), which prohibits a funding recipient from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the program as respects individuals of a particular race, color, or national origin." *Id.* Count I of the complaint before us is based on this regulation prohibiting discriminatory effects in educational programs.

A.

The District Court held that the complaint fails to state a claim under Title VI[1] or the Department of Education's

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1. The District Court read the complaint as alleging a violation of Title VI. At oral argument, the plaintiffs' counsel acknowledged that the complaint does not have a separate count under the statute, although it does allege that defendants adopted their different funding methodologies with knowledge of the racially discriminatory consequences. Counsel noted that in a recent decision, *Davis v. Monroe County Board of Education*, 119 S. Ct. 1661 (1999), the Supreme Court held that in some circumstances a school district's deliberate indifference to sexual harassment of which it had knowledge amounts to an intentional violation of Title IX. Counsel here argued that there is a spectrum between the extremes of intentional discrimination and

Title VI regulations because it does not adequately allege that a specific element of the Commonwealth's funding practices adversely and disproportionately affects students of a particular race. *Powell v. Ridge*, No. 98-1223, slip op. at 32 (E.D. Pa. Nov. 18, 1998). Plaintiffs challenge this holding on appeal, insisting that their complaint meets the applicable pleading standard.

Although the Supreme Court has not yet spoken on the issue, the courts of appeals have generally agreed that the parties' respective burdens in a Title VI disparate impact case should follow those developed in Title VII cases. *See, e.g., New York Urban League, Inc. v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *City of Chicago v. Lindley*, 66 F.3d 819, 828-29 & n.12 (7th Cir. 1995); *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1407 (11th Cir. 1993); *cf. NAACP v. Medical Ctr., Inc.*, 657 F.2d 1322, 1333 (3d Cir. 1981) (en banc) (accepting without comment parties' suggestion that "the decisional law allocating the burden of production and persuasion under Title VII is instructive in [a Title VI] case"). Thus, a plaintiff in a Title VI disparate impact suit bears the initial burden of establishing a prima facie case that a facially neutral practice has resulted in a racial disparity. *See Ferguson v. City of Charleston*, ___ F.3d ___, 1999 WL 492681 (4th Cir. July 13, 1999); *New York Urban League*, 71 F.3d at 1036; *Elston*, 997 F.2d at 1407. If the plaintiff meets that burden, then the defendant must establish a "substantial legitimate justification," *see New York Urban League*, 71 F.3d at 1036, or a "legitimate, nondiscriminatory reason[ ]," *Medical Ctr.*

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discriminatory effect. It appears that plaintiffs suggest that with discovery they may be able to make a case of intent under Title VI comparable to that which the Court accepted in *Davis* as meeting the intent requirement under Title IX. Without deciding whether a variation of the *Davis* standard applies here, we believe that plaintiffs have made adequate allegations to survive a motion to dismiss and justify discovery. We note that plaintiffs here recognized that "allegations of racial discrimination are very serious." Plaintiffs should not be penalized for their scrupulousness in declining to include allegations against elected officials concerning conduct that they suspect but of which they currently have no direct proof.

Inc., 657 F.2d at 1331, for the practice. *See Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985). Once the defendant meets its rebuttal burden, the plaintiff must then establish either that the defendant overlooked an equally effective alternative with less discriminatory effects or that the proffered justification is no more than a pretext for racial discrimination. *See Georgia State Conference*, 775 F.2d at 1417.

At trial, a Title VI disparate impact plaintiff cannot meet the burden of establishing a prima facie case without proving "that the defendants' racially neutral practice detrimentally affects persons of a particular race to a greater extent than other races." *Id.* at 1421. It is not enough for the plaintiff "merely [to] prove circumstances raising an inference of discriminatory impact at issue; [the plaintiff] must prove the discriminatory impact at issue." *Johnson v. Uncle Ben's Inc.*, 657 F.2d 750, 753 (5th Cir. 1981).

The burden a Title VI plaintiff must meet to survive a motion to dismiss, however, is much less onerous. To survive a motion to dismiss, all that the plaintiff must do is plead that a facially neutral practice's adverse effects fall disproportionately on a group protected by Title VI. The Court of Appeals for the Eighth Circuit explained in *Ring v. First Interstate Mortgage, Inc.*, 984 F.2d 924 (8th Cir. 1993): "the prima facie case under [disparate impact] analysis is an evidentiary standard — it defines the quantum of *proof* plaintiff must present to create a rebuttable presumption of discrimination . . . . Under the Federal Rules of Civil Procedure, an evidentiary standard is not a proper measure of whether a complaint fails to state a claim." *Id.* at 926. Furthermore, as the Supreme Court has stated, "[w]hen a federal court reviews the sufficiency of a complaint . . . [t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds, Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *accord Lake v. Arnold*, 112 F.3d 682, 688 (3d Cir. 1997).

The complaint in this case states, *inter alia*:

> The Commonwealth Defendants' funding system for education gives school districts with high proportions of white students on average more Commonwealth treasury revenues than school districts with high proportions of non-white students, where the levels of student poverty are the same.

App. at 37-38.

> When Commonwealth treasury revenues per pupil are analyzed by the amount of poverty in school districts across the Commonwealth . . . school districts with higher proportions of non-white students receive less Commonwealth treasury revenues than districts with higher proportions of white students.

App. at 38-39.

> On average, for 1995-96, for two school districts with the same level of poverty . . . the school districts with higher non-white enrollment received $52.88 *less* per pupil for each increase of 1% in non-white enrollment.

App. at 39.

> The Commonwealth's funding policies and practices disadvantage . . . students in [underfunded] districts . . . . The foreseeable result [of the funding policies] has been serious impairment of the educational opportunities of the students in the School District, including the Student Plaintiffs. Lack of sufficient resources in the School District results, *inter alia*, in larger class sizes and higher pupil-to-teacher ratios than in surrounding school districts; reduced curricula; cuts in and elimination of programs and electives and advanced placement courses, shortages of textbooks and use of outdated textbooks; shortages of equipment, supplies and technology; spartan physical education and extracurricular programs; lack of librarians and library services; insufficient numbers of counselors and psychologists; and many inadequate and crumbling physical facilities.

App. at 40-41.

These allegations are sufficient to put the defendants on

notice that the plaintiffs will attempt to prove (1) that less educational funding is provided by the Commonwealth to school districts attended by most non-white students in Pennsylvania than to school districts attended by most white students, (2) that the school districts attended by most non-white students in Pennsylvania receive less total educational funding than do the school districts attended by most white students,[2] (3) that these disparities in funding are produced by the Commonwealth's funding formula, and (4) that the funding disparities injure non-white students by limiting their educational opportunities. Although the language of the complaint may not always be precise or its thrust clear, we nonetheless believe that plaintiffs' allegations provide more than sufficient notice to meet the pleading standard. We therefore hold that the plaintiffs should be given the opportunity to offer evidence in support of their claims. Whether they will ultimately be entitled to prevail is a very different question on which we express no opinion.

The District Court's contrary conclusion that the plaintiffs' complaint does not meet the pleading standard rests on a mischaracterization of the complaint. The District Court described the complaint as alleging that "the uniformly applied state formula for allocating basic education funds among the 501 school districts does not bring about the same results in Philadelphia as it might in another, more affluent district. . . ." *Powell*, slip op. at 29. This characterization suggests that the disparity the plaintiffs have pled is one based on economic circumstances rather than race. However, the complaint specifically alleges that the disparity in funding cannot be explained by reference to relative wealth or poverty because

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2. In their reply brief, the plaintiffs state, "The Complaint alleges adverse racial impact in both the distribution of Commonwealth treasury revenues *and* the allocation of total public school funding dollars in Pennsylvania, for which the Commonwealth is statutorily and constitutionally responsible. *See, e.g.*, J.A. 35-39, ¶¶ 47, 52, 56, 57." Appellants' Reply Br. at 24. Although a liberal reading of the paragraphs cited appears to support plaintiffs' statement, if there is any disagreement as to whether the complaint does so allege, it can be resolved by amendment.

the disparities are present when districts of the same poverty level are compared. *See, e.g.*, App. at 37-39.

The District Court also stated that "the Plaintiffs want the School District to get more than the statutory formula provides under the theory that factors external to the state subsidy program make education more expensive or funding shortfalls greater in Philadelphia." *Powell*, slip op. at 32. This misstates the plaintiffs' request. Notwithstanding the District Court's characterization, the plaintiffs do not rely on any factors external to the state subsidy program in seeking more funding than is provided under the statutory formula. According to their allegations, they seek more funding on the ground that the formula provides minority school districts[3] with less funding than it does similarly situated non-minority districts, regardless of the cost of education.

Because these mischaracterizations affected the District Court's decision and because a review of the complaint establishes that the complaint, when not mischaracterized, meets the pleading standard, we must reverse.

Defendants argue that the complaint fails to state a claim because it compares the effect of the funding formula on school districts rather than its effect on individuals. Unquestionably, under Title VI and 34 C.F.R. § 100.3(b)(2), the disparate impact complained of must fall on an individual rather than on a school district. Plaintiffs, cognizant of that requirement, have alleged that the Commonwealth's funding system results in proportionately less funding per child to school districts with high proportions of non-white students than to school districts with high proportions of white students. They argue that the effect of less funding per student is larger class sizes, higher pupil per teacher ratios, reduced curricula, fewer programs, and less textbooks, equipment, supplies, and technology per student than received by school districts with proportionately more white students. While it may

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3. The complaint focuses on the Philadelphia School District which is alleged to have a 77% to 80% minority student body. Plaintiffs allege that there are eleven other school districts in Pennsylvania with student bodies composed of more than 50% minorities.

ultimately be more difficult to prove the impact, and consequently the disparate impact, on the school children because the funding is directed to the school districts, that potential difficulty does not justify denying plaintiffs the opportunity to prove the effect alleged.

Defendants also argue that plaintiffs' comparisons of school districts are invalid because there are some white students in the allegedly disadvantaged minority school districts and some non-white students in the allegedly advantaged white school districts. Defendants' position was made explicit at oral argument when their counsel stated that in order to show an adverse effect, "It's my position that [plaintiffs] have to show that 100 percent [of the minority students] are, in fact, adversely affected." Transcript of Oral Argument at 53. We know of no authority that imposes such a requirement. The regulation merely prohibits "the effect of subjecting individuals to discrimination because of their race." If plaintiffs succeed in their attempt to show disparate effect resulting from the challenged funding practices, the number of non-white school children affected might be relevant to the factfinder's determination whether the adverse effect is "because of their race." We have never held, however, that as a matter of law the practice complained of must affect a certain minimum percentage of the minority group to justify a finding that the discrimination is because of race.

In addition, defendants complain that plaintiffs only compare subsets of school districts, selected by reference to such factors as poverty, proximity to the School District, or "high proportion" of minority school children (sometimes described as 75% or more minority enrollment). Specifically, defendants contend that plaintiffs never "compare the total revenues of all minority districts, however defined, with the total revenues of all majority districts [presumably per student]." Executive Defendants' Br. at 22. We need not determine here whether the particular comparisons plaintiffs make in their complaint are either necessary or sufficient to prove disparate impact. The relevance and validity of these comparisons goes to the merits of plaintiffs' case, not to the maintenance of their complaint, and should be determined only upon a developed record.

Finally, defendants contend that the complaint is insufficient because it fails to identify a particular part of the funding formula as producing the disparate impact. This argument assumes without justification that it is a portion of the formula and not the formula as a whole that produces the alleged effects. Moreover, it would be a daunting hurdle were plaintiffs required at the pleading stage, before answers have been filed and before discovery, to identify what specific portion or portions of the Commonwealth's complex funding formula is responsible for the alleged inequality. We note that there are many components to the Commonwealth's formula, which the plaintiffs allege was changed each year between 1991-92 and 1996-97. Indeed, even after requesting and receiving supplemental briefs from the parties concerning that formula, we remain unable to discern with precision the basis on which the Commonwealth funds the school districts. It may be that some of the necessary information will be forthcoming from the defendants' files and employees during discovery.

Under these circumstances, we conclude that the plaintiffs did not need to identify in the complaint a particular portion of the formula as objectionable in order to plead a disparate impact claim. To survive a motion to dismiss, plaintiffs need merely plead sufficient allegations to put the defendants on notice of what they intend to prove at trial. The defendants in this case are on notice that plaintiffs intend to prove that their funding formula produces disparate effects, and the defendants are in as good a position as anybody to know precisely what that funding formula entails.

B.

Defendants argue that we should uphold the District Court's decision on the alternate ground that Title VI regulations do not provide a private right of action. It is by now well established that implication of a private right of action for a statute requires analysis of the factors set forth in *Cort v. Ash*, 422 U.S. 66 (1975). The *Cort* factors ask:

> First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted" — that is,

> does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff? And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?

Id. at 78 (citations omitted). A similar analysis which incorporates the *Cort* factors is appropriate in determining whether to infer a private right of action from an agency rule or regulation. *See Angelastro v. Prudential-Bache Securities, Inc.*, 764 F.2d 939 (3d Cir. 1985).

In *Chester Residents*, 132 F.3d at 927, a decision that has since been vacated as moot, this court considered the issue before us here, "whether a private right of action exists under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI." Although the plaintiffs there had contended that the Supreme Court's decisions in *Guardians Association v. Civil Service Commission*, 463 U.S. 582 (1983), and *Alexander v. Choate*, 469 U.S. 287 (1985), establish the existence of a private right of action under the regulations, we rejected that contention. We noted that although five Justices implicitly endorsed the existence of a private right of action in those cases, the Supreme Court never directly addressed the issue. *See Chester Residents*, 132 F.2d at 929-33.

We also rejected the suggestion of the defendants that our discussion in *Chowdhury v. Reading Hospital and Medical Center*, 677 F.2d 317 (3d Cir. 1982), regarding the requirements for a claim of intentional discrimination under section 601 of Title VI necessarily means that there is no private right of action under section 602 of the Act. We thus found no direct authority confirming or denying a private right of action under the Title VI regulation. *Chester Residents*, 132 F.3d at 931.

We then proceeded to apply the *Angelastro* analysis to decide whether such a right of action should be inferred. In

Angelastro, we applied a three-pronged test in "[d]eciding whether to imply a private right of action from an agency rule." First, a court must ascertain whether a private right of action exists under the statute under which the rule was promulgated. *See id.* "If under *Cort v. Ash* and its progeny, a court finds that Congress did not intend the statute to be enforced by private actions, then the inquiry is concluded." *Id.* Otherwise, two further inquiries must be made: "whether the agency rule is properly within the scope of the enabling statute" and "whether implying a private right of action will further the purposes of the enabling statute." *Id.*

In *Chester Residents*, we quickly resolved the inquiry into the second and third prongs of *Angelastro*. We determined that the agency rule is properly within the scope of Title VI because in its unanimous opinion in *Alexander* the Supreme Court stated that " 'actions having an unjustifiable disparate impact on minorities [can] be redressed through agency regulations designed to implement the purposes of Title VI.' " *Chester Residents*, 132 F.3d at 933 (alteration in original) (quoting *Alexander*, 469 U.S. at 293).

We also concluded that the third prong — whether implying a private right of action under the disparate impact regulations will further the purposes of Title VI — was also satisfied. Title VI's purposes are to "(1) combat discrimination by entities who receive federal funds; and (2) provide citizens with effective protection against discrimination." *Id.* at 936 (citing *Cannon v. University of Chicago*, 441 U.S. 677, 704 (1979)). Therefore, we reasoned, "a private right of action will increase enforcement," and we concluded that such increased enforcement will further Title VI's purposes, compensating for the agency's lack of sufficient resources to adequately enforce the regulation itself. *Chester Residents*, 132 F.3d at 936.

The *Angelastro* prong to which we devoted the most attention in *Chester Residents* was the first inquiry, which asks whether the statute under which the regulation was promulgated (here Title VI) properly permits the implication of a private right of action. We analyzed this prong in *Chester Residents* in terms of the *Cort* factors and determined that the Title VI regulations create federal rights

in favor of individual plaintiffs (the first *Cort* factor), and that "there is some indication in the legislative history . . . of an intent to create a private right of action" (the second *Cort* factor). *See Chester Residents*, 132 F.3d at 933 n.10, 934. We further held that implying a remedy for the plaintiffs is consistent with the underlying purposes of the legislative scheme (the third factor), reasoning:

> The procedural requirements in section 602 provide a fund recipient with a form of notice that the agency has begun an investigation which may culminate in the termination of its funding. We note that a private lawsuit also affords a fund recipient similar notice. If the purpose of the requirements is to provide bare notice, private lawsuits are consistent with the legislative scheme of Title VI. Furthermore, unlike the EPA, private plaintiffs do not have authority to terminate funding. As a result, the purpose that the requirements serve is not as significant in private lawsuits, where the potential remedy does not include the result (i.e., termination of funding) at which Congress directed the requirements. Stated differently, the requirements were designed to cushion the blow of a result that private plaintiffs cannot effectuate.

Id. at 935-36 (footnote omitted). Finally, the last *Cort* factor — whether the cause of action is one traditionally relegated to state law, in an area basically the concern of States — was deemed "irrelevant because Title VI is federal law." *Id.* at 933 n.10.

We need not take this somewhat circuitous route to analyze the first *Angelastro* factor in the inquiry we make here. In *Angelastro*, we explained that the initial inquiry focuses on whether the *statute* implemented by the regulation contains an implied private right of action: "Where the enabling statute authorizes an implied right of action, courts should permit private suits under agency rules within the scope of the enabling statute if doing so is not at variance with the purpose of the statute. . . . [I]f Congress intended to permit private actions for violations of the statute, 'it would be anomalous to preclude private parties from suing under the rules that impart meaning to the statute.'" 764 F.2d at 947.

As noted above, the regulation at issue here, although promulgated by the Department of Education under section 602 of Title VI, implements section 601 of Title VI. *See* 42 U.S.C. § 2000d-1 (authorizing regulation "to effectuate the provisions of section 2000d of . . . title [42]"). The Supreme Court precedent and our cases firmly establish that section 601 of Title VI gives rise to an implied right of action, at least for purposes of securing injunctive relief. *See Guardians*, 463 U.S. at 593-95 (Opinion of White, J.); *Cannon*, 441 U.S. at 694-703, 710-16; *Cheyney State College Faculty v. Hufstedler*, 703 F.2d 732, 737 (3d Cir. 1983); *NAACP v. Medical Ctr., Inc.*, 599 F.2d 1247, 1248, 1250 n.10 (3d Cir. 1979). It therefore follows that the first prong of *Angelastro* is satisfied. We are persuaded by the analyses in *Chester Residents* that the second and third prong of *Angelastro* are also met.

Our conclusion is in keeping with the decisions of the other courts of appeals that have addressed this issue. The Eleventh Circuit has explicitly "recognized an implied private right of action to enforce the regulations promulgated under section 602 of Title VI," thereby permitting private plaintiffs to "obtain injunctive or declaratory relief by showing, *inter alia*, that the challenged action has 'a disparate impact on groups protected by the statute, even if those actions are not intentionally discriminatory.'" *Burton v. City of Belle Glade*, No. 97-5091, 1999 WL 425895 (11th Cir. June 25, 1999) (quoting *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993)); *see also Georgia State Conference*, 775 F.2d at 1417. At least four other federal courts of appeal have reached the merits of disparate impact claims brought by individual plaintiffs under the Title VI regulations, although without explicitly determining whether a private right of action exists thereunder. *See Villanueva v. Carere*, 85 F.3d 481, 486-87 (10th Cir. 1996) (affirming refusal to grant preliminary injunction on grounds that disparate impact had not been adequately shown); *New York Urban League, Inc. v. New York*, 71 F.3d 1031 (2d Cir. 1995) (same); *City of Chicago v. Lindley*, 66 F.3d 819, 827-30 (7th Cir. 1995) (affirming grant of summary judgment to defendant on ground that disparate impact had not been adequately shown); *Larry P. by Lucille P. v. Riles*, 793 F.2d

969 (9th Cir. 1984) (affirming judgment for plaintiff on disparate impact claim following trial).

Defendants nevertheless argue that interpreting the Title VI regulation to provide a private right of action would contravene the Supreme Court's pronouncement in *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976), that administrative regulations may not create federal law. There the Court stated, "The rulemaking power granted to an administrative agency charged with the administration of a federal statute is not the power to make law. Rather, it is the power to adopt regulations to carry into effect the will of Congress as expressed by the statute." *See id.* at 213-14 (internal quotation marks omitted). Defendants argue that because the Title VI regulation extends the conduct prohibited by Title VI to encompass disparate impact discrimination, whereas Title VI prohibits only intentional discrimination, a holding that private suits may be brought under the regulation would effectively permit administrative agencies to create substantive law.

Defendants' argument conflicts with the Supreme Court's own pronouncements. As previously noted, in *Guardians* five of the nine justices agreed that the administrative regulations incorporating a disparate impact standard are valid, *see* 463 U.S. at 584 n.2, 607 n.27, and thereafter the Court in *Alexander* characterized *Guardians* as so holding. *See Alexander*, 469 U.S. at 293 ("[*Guardians* held that actions having an unjustifiable disparate impact on minorities could be redressed through agency regulations designed to implement the purposes of Title VI"). Obviously, the Supreme Court did not believe that administrative regulations that prohibit disparate impact were an impermissible creation of substantive law, even though in its own earlier opinion in *Guardians* the Supreme Court had held that Title VI itself did not extend that far. *See also United States v. O'Hagan*, 521 U.S. 642, 672-73 (1997) (sustaining SEC regulation that prohibits more activities than statute on ground that "[a] prophylactic measure, because its mission is to prevent, typically encompasses more than the core activity prohibited").

Moreover, numerous other appellate decisions have implied private rights of actions under regulations under

similar circumstances. *See, e.g., Lowrey v. Texas A&M University System*, 117 F.3d 242 (5th Cir. 1997) (Department of Education regulations promulgated under Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 et seq.); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530 (9th Cir. 1984) (Securities and Exchange Commission Rule 10b-16, 17 C.F.R. § 240.16). In each of these cases, the analysis as to whether there was a private right of action to enforce the regulation at issue would not have been necessary if the regulation did not go further than that statute; the private right of action under the particular statute alone would have sufficed.

We therefore reject defendants' arguments that Count I of this complaint does not state a claim under the Department of Education regulation. We do not decide whether every allegation of Count I of the complaint states a viable claim under the Title VI regulation. Because the District Court misread the thrust of the complaint, it never parsed the allegations to ascertain how and whether they differ. We do not suggest that the complaint be dissected upon remand. We merely decide that there is at least one viable claim and that plaintiffs should be permitted to proceed to discovery after answers have been filed.

C.

Plaintiffs' second count invokes one of the Civil Rights Acts, 42 U.S.C. § 1983, to redress the defendants' alleged violation of the regulation. Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in a[] . . . proper proceeding for redress.

The District Court properly interpreted this statute to mean that "[a] § 1983 action has two essential elements: (1) that the conduct complained of was committed by *a person*

acting under color of state law; and (2) that this conduct deprived a [citizen or other] *person* of rights, privileges, or immunities secured by the Constitution or laws of the United States." *Powell*, slip op. at 12 (emphasis added).

The District Court pretermitted any analysis of whether the complaint adequately alleges that the defendants deprived any person of rights secured by the laws of the United States within the scope of § 1983 because it held that the four defendants cannot be sued under that statute. First it held that "[a]s officials of the Commonwealth of Pennsylvania who have been sued for actions taken while in their official capacities, Ridge, Hickok and Hafer are not 'persons' under § 1983." *Id.* at 14. Then it held that Gallagher, who was sued solely for actions taken in his official capacity as the chairperson of the Commonwealth's Board of Education, is not a "person" who may be sued under § 1983 because the Board's funding comes directly from the Commonwealth and it is therefore "an arm of the state" immune from suit. *Id.*

The District Court's conclusions contravene the applicable Supreme Court precedent. When state officials are sued in their official capacities for damages, that suit is treated as one against the state and the official is not considered to be a "person." *See Will v. Michigan Dept. of State Police*, 492 U.S. 58, 71 & n.10 (1989). Hence, § 1983 cannot be invoked. On the other hand, when the § 1983 suit seeks damages against the state officials in their individual or personal capacities, it may be maintained (subject to any applicable immunity doctrine) even though they acted in their official capacities in the matter at issue. *See Hafer v. Melo*, 502 U.S. 21, 27 (1991) ("A government official in the role of personal-capacity defendant . . . fits comfortably within the statutory term 'person' ").

A suit for damages must be contrasted with a suit for equitable relief. The Supreme Court has held that a state official sued for injunctive relief is a "person" under § 1983 because an action for prospective relief is not treated as a suit against the state. *See Will*, 491 U.S. at 71 n.10 ("[A] state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated

as actions against the State.'" (quoting *Kentucky v. Graham*, 473 U.S. 19, 167 n.14 (1985)); *see also Edelman v. Jordan*, 415 U.S. 651, 666-74 (1974) (discussing *Ex parte Young*, 209 U.S. 123 (1908)).

The complaint in this case seeks only the equitable remedies of an injunction and declaratory relief. The conclusion that Ridge, Hickok, Hafer, and Gallagher are persons within the meaning of § 1983 is thus inescapable.

Perhaps not surprisingly, defendants have chosen not to defend the District Court's reasoning, arguing instead that the District Court's decision may be upheld on another ground. Notwithstanding our general reluctance to venture into areas the District Court did not consider, we consider this issue now as a matter of judicial expediency because the case will be remanded and it will undoubtedly arise again.

Defendants first argue that Title VI's "comprehensive enforcement scheme" precludes a § 1983 claim. Once a plaintiff has identified a federal right that has allegedly been violated, there arises a "rebuttable presumption that the right is enforceable under § 1983." *Blessing v. Freestone*, 520 U.S. 329, 341 (1997). The presumption is rebutted "if Congress 'specifically foreclosed a remedy under § 1983' . . . [either] expressly, by forbidding recourse to § 1983 in the statute itself, or impliedly, by creating a comprehensive enforcement scheme that is incompatible with individual enforcement under § 1983." *Id.* (quoting *Smith v. Robinson*, 468 U.S. 992, 1005 n.9 (1984)).

Neither Title VI nor the regulation promulgated thereunder purports to restrict the availability of relief under § 1983. Defendants thus "must make the difficult showing that allowing a § 1983 action to go forward in these circumstances 'would be inconsistent with Congress' carefully tailored scheme.'" *Id.* at 346 (quoting *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 107 (1989)).

Only twice has the Supreme Court found a remedial scheme sufficiently comprehensive to supplant § 1983. *See Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n*, 453 U.S. 1 (1981); *Smith v. Robinson*, 468 U.S. 992 (1984). In both instances, the Supreme Court emphasized

that the statutes that were held to be displaced themselves specifically provided aggrieved individuals with extensive statutory remedies. However, the Supreme Court has cautioned that "a plaintiff's ability to invoke § 1983 cannot be defeated simply by '[t]he availability of administrative mechanisms to protect plaintiff's interests.'" *Blessing*, 520 U.S. at 347 (quoting *Golden State*, 493 U.S. at 347). On at least three occasions the Court found that an agency's authority to cut off federal funding was insufficient to justify the denial of a § 1983 remedy. *See Wright v. City of Roanoke Redevelopment and Housing Auth.*, 479 U.S. 418, 428 (1987); *Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498, 521-22 (1990); *Blessing*, 520 U.S. at 347-48.

Cognizant of this guidance, we see no reason to hold that resort to § 1983 has been foreclosed here. Neither Title VI nor the Department of Education regulation establishes "an elaborate procedural mechanism to protect the rights of [individual plaintiffs]," as did the statute at issue in *Smith*, where the Court stated, "The [Act's] procedures . . . ensure that hearings [are] conducted by the state [and that these hearings are] fair and adequate," 468 U.S. at 1010-11 (interpreting the Education of the Handicapped Act, 84 Stat. 175, as amended, 20 U.S.C. § 1400 *et seq.*). Nor is it possible to describe the administrative remedies Title VI and the regulations establish as "unusually elaborate," as the Court described the enforcement provisions of the pollution control statutes at issue in *Sea Clammers*. *See* 453 U.S. at 13. Indeed, the statutory scheme under Title VI does not specifically provide individual plaintiffs with any administrative remedy. *See Chowdhury*, 677 F.2d at 319 (noting that under the administrative enforcement mechanism Congress provided in section 602 of Title VI, "an aggrieved individual may file a complaint with the funding agency but has no role in the investigation or adjudication, if any, of the complaint" (footnotes omitted)).

Defendants nonetheless contend that we are constrained to hold that plaintiffs' claim under § 1983 may not coexist with Title VI because of our decisions in two Title IX cases: *Williams v. School District*, 998 F.2d 168 (3d Cir. 1993), and *Pfeiffer v. Marion Center Area School District*, 917 F.2d 779 (3d Cir. 1990). In *Williams*, a male student brought suit

alleging that the defendants violated Title IX by excluding him from the girls' field hockey team. Williams' complaint also stated a claim under § 1983 and the Equal Protection Clause. On appeal, we reversed the grant of summary judgment to Williams on the Title IX claim, holding that disputed issues of material fact remained. We also vacated the district court's judgment for plaintiff on his constitutional claims brought under § 1983. We held that the district court should have refrained from deciding the plaintiff's § 1983 action in keeping with "the Supreme Court's admonition that courts should exercise restraint before reaching federal constitutional claims." *Williams*, 998 F.2d at 176.

In *Williams*, we relied on our earlier opinion in *Pfeiffer*, where we upheld the district court's decision not to reach plaintiff's constitutional claims of gender discrimination brought under § 1983 once it had decided that Pfeiffer's constitutional claims were "subsumed" within her Title IX claim.

Defendants contend that these cases stand for the broad proposition that all § 1983 claims are precluded by Title IX and argue that Title VI must be similarly interpreted. Those decisions cannot be interpreted that broadly. They concerned the interaction between a plaintiff's constitutional claims and statutory claims, and the holdings were predicated on the principle that courts should refrain from deciding constitutional issues unnecessarily. For example, in *Williams* we stated that the proper course in *Pfeiffer* was for the district court to "*refuse[] to hear* plaintiff's section 1983 claim." *Williams*, 998 F.2d at 176 (emphasis added). Similarly, we described ourselves as "*not reach[ing]* the constitutional issues" Williams sought to raise. *Id.* (emphasis added). We vacated the district court's § 1983 ruling, rather than reversing it or remanding for further proceedings. Those holdings and pronouncements are consistent with the prudential imperative not to resolve a constitutional issue unnecessarily. They do not suggest, as defendants state, that there can never be a § 1983 claim for violation of Title IX.

Most important here is that plaintiffs do not invoke § 1983 to redress a constitutional claim but instead a claim under federal law. Thus, the principle that courts should avoid deciding constitutional claims whenever possible is inapplicable. We therefore reject defendants' contention that our decision here is controlled by these past precedents. Instead, we hold that a § 1983 suit is not incompatible with Title VI and the Title VI regulation. At oral argument, plaintiffs' counsel recognized that at some point in the litigation it may develop that it is not necessary to maintain both the claim evolving from Title VI and the § 1983 claim, and the approach taken in *Pfeiffer* and *Williams* may be appropriate. We agree that no more is required now.

D.

Finally, the legislative intervenor defendants question the plaintiffs' standing to maintain each count of their complaint on the ground that plaintiffs' injury is not likely to be redressed by court action. In order to have standing under the Constitution, a plaintiff must show (1) an actual injury that is (2) causally connected to the conduct complained of and (3) likely to be "redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal quotation marks omitted). The injury must consist of "an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Id.* at 560 (citations and internal quotation marks omitted).

The legislative defendants contend that any injury the plaintiffs may have suffered is not redressable because "approximately half of the funds received by the School District are from local sources not controlled by the Executive Branch Defendants," who presumably are free to decrease their contribution for public education. Legislative Defendants' Br. at 35. The legislative defendants therefore conclude that, under those circumstances, the court's order would not redress the plaintiffs' injury, and hence they have no standing.

We reject the defendants' contention because their

argument implicitly mischaracterizes plaintiffs' injury. The legislative defendants err in assuming that the injury in this case consists of a lack of adequate funding. Here, the plaintiffs complain that non-white school children in Pennsylvania receive less favorable treatment than their white counterparts because the state funds the school districts most of them attend at a lower level than it does the school districts most white school children attend. A court order directing the state to equalize funding between these school districts would redress this comparative injury, even if other sources of the school district's income were simultaneously reduced. We therefore conclude that the school children's injury is redressable by court order.[4]

The concept of standing also encompasses prudential limits on federal-court jurisdiction. *See Warth v. Seldin*, 422 U.S. 490, 498 (1975). Courts require plaintiffs to satisfy certain prudential concerns in an effort "to avoid deciding questions of broad social import where no individual rights would be vindicated and to limit access to the federal courts to those litigants best suited to assert a particular claim." *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 99-100 (1979). Thus, they require (1) that the injury alleged not be a "generalized grievance" that is "shared in substantially equal measure by all or a large class of citizens," (2) that the plaintiff assert his/her own legal rights rather than those of other parties, and (3) that "the plaintiff's complaint . . . fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474-75 (1982) (internal quotation marks omitted).

Not all plaintiffs must meet the prudential standing requirements imposed by courts. Congress may legislatively direct that standing under a particular act is to be limited only by Article III. *See Gladstone, Realtors*, 441 U.S. at 100; *Fair Housing Council v. Montgomery Newspapers*, 141 F.3d

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4. Moreover, plaintiffs take the position that the Commonwealth is responsible for all of the School District's funding. We need not decide that issue in order to hold that plaintiffs have adequately pled standing.

71, 75 (3d Cir. 1998). In such case plaintiffs may " 'seek relief on the basis of the legal rights and interests of others, and . . . may invoke the general public interest' " in support of their claim. *Fair Housing Council*, 141 F.3d at 75 (quoting *Warth*, 422 U.S. at 500).

The defendants contend that the City of Philadelphia, the School District of Philadelphia, the Board of Education of the School District of Philadelphia, and the individual officers (collectively, the "City and School District plaintiffs") lack prudential standing because they are not asserting their own legal rights, but rather those of other parties. The legislative defendants argue that the City and School District plaintiffs are not "person[s]" within the meaning of Title VI and that, therefore these plaintiffs have no rights of their own under that statute. The District Court accepted this contention and dismissed the complaint as to the City and School District plaintiffs. The plaintiffs challenge that dismissal on appeal.

A determination of the standing of the City and School District plaintiffs at this time would involve us in a complex issue that may have no practical significance. We note in this regard that the defendants do not challenge the prudential standing of the school children, and those plaintiffs plainly meet the constitutional standing requirements. Thus, there are individual plaintiffs in this case who will carry the suit forward in any event.

Nor can there be serious question about the standing of the organization plaintiffs, which the executive defendants have not challenged. The standing of the plaintiff organizations to bring this suit is consistent with the long line of cases in which organizations have sued to enforce civil rights, civil liberties, environmental interests, etc. *See Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 308 (1985); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 369 (1982); *Andrus v. Sierra Club*, 442 U.S. 347, 352, 353 & n.8 (1979); *Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corp.*, 28 F.3d 1268, 1276 (D.C. Cir. 1994); *Medical Ctr., Inc.*, 657 F.2d at 1322.

Therefore, this situation is analogous to that presented in *Village of Arlington Heights v. Metropolitan Housing*

Development Corp., 429 U.S. 252 (1977). There, a real estate development corporation challenged the local authority's refusal to rezone a particular parcel of land to allow the construction of racially integrated housing. The Supreme Court found that the corporation met the constitutional standing requirements but was less certain that the corporation met prudential standing requirements given that the corporation had not itself been discriminated against on the basis of race. The Court held that it need not decide the prudential standing question because another of the plaintiffs, an individual, had suffered the discrimination directly. *See id.* at 264 & n.9.

We likewise conclude that we need not decide whether the City and School District plaintiffs meet prudential standing requirements because the individual school children, who have allegedly suffered discrimination directly, and the plaintiff organizations may properly bring this controversy before the federal courts.

III.

As we have stated earlier, we take no position on the merits of the allegations of the complaint. It is indeed a serious matter for plaintiffs to charge that the practices of the Commonwealth of Pennsylvania in funding public schools have a racially disparate effect. But if the charge is serious, so are the inevitable effects if the charge turns out to have merit. We need no long list of citations to note the widespread recognition of the importance of a good public school education for all of our young people — rich and poor, black and white. Horace Mann, the great educator, wrote "Education, . . . beyond all other devices of human origin, is the great equalizer of the conditions of men, — the balance-wheel of the social machinery."

We will reverse the order of the District Court dismissing the complaint, and remand for further proceedings consistent with this opinion.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

APPENDIX B
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID POWELL, *et al.*	:	CIVIL ACTION
	:	
v.	:	
	:	
THOMAS J. RIDGE, *et al.*	:	NO. 98-1223

MEMORANDUM AND FINAL JUDGMENT

HUTTON, J. November 18, 1998

Presently before this Court is the Defendants' Motion to Dismiss the Plaintiffs' Complaint pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure (Docket No. 7), the Plaintiffs' response thereto (Docket No. 12), the Defendants' reply thereto (Docket No. 15), the Defendants' Supplemental Motion to Dismiss (Docket No. 25), the Motion to Dismiss of the Legislative Intervenors (Docket No. 16), the Plaintiffs' response thereto (Docket No. 18), the Brief of Legislative Intervenors for Judgment on the Pleadings (Docket No. 23), the Legislative Intervenors' Reply Brief in Support of their Motion to Dismiss and for Judgment on the Pleadings (Docket No. 24), and the Plaintiffs' Opposition to Intervenors' Supplemental Motion for Judgment on the Pleadings and Defendants' Supplemental Motion to Dismiss Complaint (Docket No. 26). Also before the court is the petition of the United States for leave to participate as *amicus curiae* in this action (Docket No. 13), which motion is granted and Brief of the United States as *Amicus Curiae* in Opposition to Defendant Intervenors' Motion to Dismiss or for Judgment on the Pleadings (Docket No. 20), and United States' Motion to Further Participate as *Amicus Curiae* and to Intervene of Right (Docket No. 21). For the foregoing reasons, the Plaintiffs' Complaint will be dismissed in part.

I. BACKGROUND

On March 9, 1998, Plaintiffs[1] filed the instant action "against officials of the Commonwealth of Pennsylvania who are responsible for the public education of children in the Commonwealth, including those in Philadelphia." (Pls.' Compl. ¶ 1.) Plaintiffs charge Defendants[2] with the following: (1) violating Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-4a (1994), and certain regulations promulgated by the United States Department of Education's Title VI implementing requirements, 34 C. F. R. §§ 100. 3 (b) (1) and 100. 3 (b) (2) (1997) ("Title VI claims") (Count One); and (2) violating the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1994) (Count Two). The Federal Government provides the states with financial assistance to benefit public schools. The Commonwealth distributes these funds to Commonwealth public school districts, including the Philadelphia School District, based on a statutory funding formula. Plaintiffs allege that Defendants' statutory funding formula discriminates against the students of Philadelphia based on race, color and national origin. (Pls.' Compl. ¶ 2.) Consequently, Plaintiffs seek declaratory, injunctive and other appropriate relief to stop further alleged discrimination. (Pls.' Compl. ¶ 3.)

The Plaintiffs allege that the Commonwealth's statutory public school funding formula has a disparate impact on the school children of Philadelphia, the majority of whom are poor and non-white, in violation of Title VI and § 1983. The Plaintiffs allege that over seventy-five percent of the students that the Philadelphia School District is charged with educating

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1. The Plaintiffs include: "Students who attend public school in Philadelphia, their parents and guardians, and organizations that represent their interests ('Students and Organization Plaintiffs'); the School District of Philadelphia, the Board of Education of the School District of Philadelphia, and officials who lead the School District ('School District Plaintiffs'); and the Mayor of the City of Philadelphia ('City Plaintiffs')". (Pls.' Compl. ¶ 1).

2. The Plaintiffs have named the following parties as Defendants: 1) Thomas J. Ridge, the Governor of the Commonwealth of Pennsylvania; 2) Dr. James Gallagher, Chairperson of the Board of Education for the Commonwealth of Pennsylvania; 3) Dr. Eugene Hickok, the Secretary of Education for the Commonwealth of Pennsylvania; and 4) Barbara Hafer, the Treasurer of the Commonwealth of Pennsylvania.

are non-white, that in fiscal year 1996 approximately forth-six percent of the children attending schools in the Philadelphia School District could be classified as poor because they were part of families receiving Aid to Families with Dependent Children, and that in fiscal year 1996, eighty percent of the students in the Philadelphia School District were from families eligible for free or subsidized meals. The Plaintiffs further allege that changes in the funding formula in the last several years have favored majority white school districts over majority non-white school districts.

On May 4, 1998, the Defendants filed the instant motion moving this Court for an Order dismissing the Plaintiffs' Complaint pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure. The Defendants' filed their Opposition to Defendants' Motion to Dismiss Complaint on June 17, 1998. On June 29, 1998, the Defendants filed a Reply Memorandum in Support of its Motion to Dismiss Complaint. On July 6, 1998, the Legislative Intervenors[3] filed their Motion to Dismiss. The Plaintiffs filed their response thereto on August 20, 1998. On October 7, 1998, Legislative Intervenors filed a Motion for Judgment on the Pleadings. The Legislative Intervenors filed their Reply Brief in Support of their Motion to Dismiss and for Judgment on the Pleadings on October 9, 1998. On October 15, the Defendants filed their Supplemental Motion to Dismiss. On November 6, 1998, the Plaintiffs filed their Motion in Opposition to Legislative Intervenors' Motion for Judgment on the Pleadings and Defendants' Supplemental Motion to Dismiss. It should also be noted that on June 13, 1998, the United States filed their Petition for Leave to Participate as Amicus Curiae in this action. They also filed a Brief as amicus curiae in opposition to Legislative Intervenors' Motion to Dismiss or for Judgment on the Pleadings and Motion to Further Participate as *Amicus Curiae* and to Intervene of Right on September 21, 1998.

3. On June 3, 1998, this Court granted the uncontested motion to intervene by movants Representative Matthew J Ryan, Senator Robert C. Jubelirer, Representative Jess M. Stairs and Senator James J. Rhoades (collectively, the "Legislative Intervenors").

II. DISCUSSION

A. Defendants' Motion to Dismiss the Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure

1. Standard Under Rule 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. P. 8 (a) (2). Accordingly, the plaintiff does not have to "set out *in detail* the facts upon which he bases his claim." *Conley v. Gibson*, 355 U.S. 41, 47 (1957) (emphasis added). In other words, the plaintiff need only "give the defendant *fair notice* of what the plaintiff's claim is and the grounds upon which it rests." *Id.* (emphasis added).

When considering a motion to dismiss a complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6),[4] this Court must "accept as true the facts alleged in the complaint and all reasonable inferences that can be drawn from them. Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved." *Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990) (citing *Ransom v. Marrazzo*, 848 F.2d 398, 401 (3d Cir. 1988)); *see H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249-50 (1989). The court will only dismiss the complaint if "'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *H.J. Inc.*, 492 U.S. at 249-50 (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)).

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4. Rule 12(b)(6) provides that:

> Every defense, in law or fact, to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted . . . .

Fed. R. Civ. P. 12(b)(6)

2. Analysis of Plaintiffs' Claims

In the present motion, the moving Defendants have raised four general issues. First, they assert that all of the Plaintiffs' claims are barred by the final judgment of the Commonwealth Court of Pennsylvania in *Marrero by Tabales v. Com.*, 709 A.2d 956 (Pa. Cmwlth. Mar. 2, 1998), under the doctrine of claim preclusion. Second, they argue that the Plaintiffs have failed to state a claim under Title VI because any implied cause of action created by Title VI extends only to suits against institutional recipients of federal funds and not to individuals. Third, the Defendants allege that Count Two fails to state a claim under 42 U.S.C. § 1983 because Title VI's comprehensive enforcement scheme precludes the Plaintiffs' claim. Finally, they contend that the City of Philadelphia, the School District of Philadelphia, the Board of Education of the School District of Philadelphia, Edward G. Rendell, David W. Hornbeck and Floyd W. Alston are not "persons" protected by Title VI. The Court will address each of the Defendants' arguments in turn.

a. Res Judicata

The doctrine of res judicata, or claim preclusion, gives a prior judgment dispositive effect, and bars subsequent litigation based on any claim that was, or could have been, raised in the prior proceeding. *See Board of Trustees of Trucking Employers v. Centra*, 983 F.2d 495, 504 (3d Cir. 1992). This is true regardless of whether the prior decision was correctly decided, *see. e.g., Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981), as the doctrine exists precisely to draw the line at which the priorities of the legal system shift from accuracy to finality. The doctrine accepts the risk of inaccuracy in the individual case in exchange for what courts have determined to be greater benefits—repose and the reliability of final judgments over time, and across the entire legal system. *See generally* 18 Charles A. Wright, Arthur R. Miller, *et al.*, Federal Practice and Procedure § 4403 (2d ed. 1996).

To establish the affirmative defense of res judicata, the party asserting it must establish that: (1) the first suit resulted in a final judgment on the merits; (2) the second suit involves

the same parties or their privies; and (3) the second suit is based on the same cause of action as the first. *See United States v. Athlone Indus., Inc.*, 746 F. 2d 977, 983 (3d Cir. 1984); *Harding v. Duquesne Light Co.*, 1995 WL 916926, *2 (W.D. Pa. Aug. 4, 1995). The Plaintiffs argue that *Marrero* was not a decision on the merits, that this matter does not involve the same parties as in *Marrero* or the same cause of action. (*See* Pls.' Mot. in Opp'n. at 10.). In sum, the Plaintiffs argue that the Defendants fail to satisfy even one of the three elements necessary to successfully assert claim preclusion. (*Id.*)

Collateral estoppel is inappropriate because the Defendants fail to satisfy the first requirement set forth in *Athlone*, thus, this Court need not consider the Defendants' other arguments. *Athlone*, 746 F.2d at 983. The Commonwealth Court's "Order" in *Marrero* was not a "final judgment on the merits." *See Marrero*, 709 A.2d at 966. Indeed, the court dismissed the action for presenting a nonjusticiable political question only after stating that "we are precluded from addressing the merits of the claims underlying the instant action as the resolution of those issues have been solely committed to the discretion of the General Assembly Under Article 3, Section 14 of the Pennsylvania Constitution." *Id.* Clearly, the court never reached the merits of the Plaintiffs' civil rights claims. The doctrine of res judicata does not apply where, as here, the court did not render a final adjudication on the merits of the prior action. *See Wade v. City of Pittsburgh*, 765 F.2d 405, 410 (3d Cir. 1985) (finding that a state court decision granting summary judgment to a municipality on the basis of statutory immunity did not preclude a subsequent federal action on the same incident); *Superior Oil Co. v. City of Port Arthur, Tex.*, 553 F. Supp. 511, 512 (E.D. Tx. 1982) (holding that the lower court's finding that the claim presented a political question was a jurisdictional decision, thus not a judgment on the merits and will not serve as a bar under res judicata principles), *rev'd on other grounds*, 726 F.2d 203 (5th Cir. 1984); *see also Talley v. Southeastern Pennsylvania Transp. Auth.*, No. CIV. A.93-3060, 1993 WL 496702, at *3 (E.D. Pa. Nov. 30, 1993) (holding that res judicata does not apply to bar second cause of action where prior wrongful termination action was dismissed with

prejudice for failure to exhaust administrative remedies) (citing *Solar v. Merit Sys. Protection Bd.*, 600 F. Supp. 535, 536 (S.D. Fla. 1984) (same)).

b. Title VI of the Civil Rights Act of 1964

Section 601 of Title VI of the Civil Rights Act of 1964 provides that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d. Section 602 of Title VI, 42 U.S.C. § 2000d-1, instructs federal agencies to promulgate regulations interpreting Title VI. *Regents of the Univ. of California v. Bakke*, 438 U.S. 265, 340 (1978) (Brennan, J., concurring and dissenting). The statute conditions an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds. *See Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 599 (1983) (opinion of White, J.); *id.*, at 609 (Powell, J., concurring in judgment); cf., *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981). The ultimate sanction for non-compliance is the termination of financial assistance. 42 U.S.C. § 2000d-1. The "primary objective" of Title VI is to ensure "that funds of the United States are not used to support racial discrimination" but "are spent in accordance with the Constitution and the moral sense of the Nation." *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 633 (1984) (citing 110 Cong. Rec. 6544 (1964) (remarks of Sen. Humphrey)).

The Defendants assert that Count I fails to state a claim because any implied cause of action created by Title VI extends only to suits against institutional recipients of federal funds and not to individuals. The Defendants argue that the Plaintiffs' Complaint is fatally flawed because it names Defendants Ridge, Gallagher, Hickok and Hafer. This Court must disagree.

In their Complaint, the Plaintiffs allege to sue Defendants Ridge, Gallagher, Hickok and Hafer in their official and individual capacities, but assert that they seek only injunctive and declaratory relief against the Defendants in their individual capacities. (Pls.' Complaint ¶¶ 27, 28, 29, 30 and 31.) The Plaintiffs allege that these Defendants are the key Pennsylvania officials who accept federal financial assistance for public school education, thereby incurring the obligations of Title VI and its regulations. (*Id.*) The Plaintiffs contend that these officials choose, set and administer the policies and practices of public education finance in Pennsylvania, which discriminate on the basis of race, color and national origin. (*Id.*) The Court finds that the Plaintiffs' suit against Defendants Ridge, Gallagher, Hickok and Hafer in their official capacities "is no different from a suit against the State itself." *Hafer v. Melo*, 502 U.S. 21, 26 (1991); *see* discussion *infra* Part II.B.4.b.

c. 42 U.S.C. § 1983

In Count Two of their Complaint, the Plaintiffs assert that the Defendants have violated § 1983 by discriminating on the basis of race, color or national origin in the educational opportunities and funding system they provide. The Defendants make two arguments challenging the validity of the Plaintiffs' claims arising under § 1983. First, the Defendants argue that the Plaintiffs cannot assert a claim under § 1983 based on Title VI because such a claim is precluded by Title VI's comprehensive enforcement scheme. Second, the Defendants assert that the Plaintiffs cannot circumvent the requirements of a Title VI claim by asserting a § 1983 claim based upon a violation of Title VI. This Court finds that the Plaintiffs have failed to satisfy a prima facie case under § 1983, and therefore are not entitled to protection under that statute.

A § 1983 action has two essential elements: (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States. 42 U.S.C. § 1983.[5] Nei-

5. Section 1983 provides as follows:

ther a state nor its officials acting in their official capacities are "persons" under § 1983. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989). Moreover, "governmental entities that are considered 'arms of the State'" are not persons under § 1983. *Id.* at 70.

In *Fitchik v. New Jersey Transit Rail Operations, Inc.*, the United States Court of Appeals for the Third Circuit listed the factors a court must consider when determining whether an entity is an "arm of the State" under *Will*:

> (1) Whether the money that would pay the judgment would come from the state (this includes three . . . factors-whether payment would come from the state's treasury, whether the agency has the money to satisfy the judgment, and whether the sovereign has immunized itself from responsibility for the agency's debts);
>
> (2) The status of the agency under state law (this includes four factors-how state law treats the agency generally, whether the entity is separately incorporated, whether the agency can sue or be sued in its own right, and whether it is immune from state taxation); and
>
> (3) What degree of autonomy the agency has.

873 F.2d 655, 659 (3d Cir.), *cert. denied*, 493 U.S. 850 (1989); *see Bolden v. SEPTA*, 953 F.2d 807, 814-16 (3d Cir. 1991), *cert. denied*, 504 U.S. 943 (1992). The Third Circuit has "repeatedly held that the most important factor in determining whether an entity is an 'arm of the State' . . . is 'whether any judgment

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> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1983.

would be paid from the state treasury.'" *Independent Enters., Inc. v. Pittsburgh Water and Sewer Auth.*, 103 F.3d 1165, 1172 (3d Cir. 1997) (quoting *Fitchik*, 873 F.2d at 659).

In the instant case, the Plaintiffs have named the following parties as Defendants: 1) Thomas J. Ridge, the Governor of the Commonwealth of Pennsylvania; 2) Dr. James Gallagher, Chairperson of the Board of Education for the Commonwealth of Pennsylvania; 3) Dr. Eugene Hickok, the Secretary of Education for the Commonwealth of Pennsylvania; and 4) Barbara Hafer, the Treasurer of the Commonwealth of Pennsylvania. Suits against state officials in their official capacity should be treated as suits against the State. *See Hafer v. Melo*, 502 U.S. 21, 26 (1991) (finding that although state officials literally are persons, an official-capacity suit against a state officer "is not a suit against the official but rather is a suit against the official's office"); *Monell*, 436 U.S. at 690 n.55 (finding that local government officials sued in their official capacities are "persons" under § 1983 in those cases in which a local government would be suable in its own name); *see also Christy v. Pennsylvania Turnpike Comm'n*, 54 F.3d 1140, 1143, n.3 (3d Cir. 1995) (finding that a suit against the individual defendants in their official capacities is the same as a suit against the Pennsylvania Turnpike Commission). As officials of the Commonwealth of Pennsylvania who have been sued for actions taken while in their official capacities, Ridge, Hickok and Hafer are not "persons" under § 1983.

Furthermore, because the Board of Education's ("Board's") funding comes directly from the Commonwealth of Pennsylvania, neither the Board nor Gallagher are "persons" under § 1983. *See* 61 Pa. Cons. Stat. Ann. § 331.2 (West Supp. 1996); 71 Pa. Cons. Stat. Ann. § 230(b) (West 1990). "[T]he Board enjoys no financial independence from the Commonwealth." *Ahmad v. Burke*, 436 F. Supp. 1307, 1311 (E.D. Pa. 1977). Accordingly, any judgment against the Board would be "paid from the state treasury." This weighs heavily in favor of the Board's "being considered 'an arm of the State.'" *Independent Entrs.*, 103 F.3d at 1173.

Moreover, the second and third factors also weigh in favor of this conclusion. Pennsylvania courts have found that

the Board enjoys sovereign immunity. *Reiff v. City of Philadelphia*, 365 A.2d 1357, 1358 (Pa. Commw. Ct. 1976). Moreover, "[t]he Board's powers, in short, are not those of an agency 'sufficiently distinct and independent from the state as not to be considered a part of the state.'" *Ahmad*, 436 F. Supp. at 1311 (quoting *Flesch v. Eastern Pennsylvania Psychiatric Inst.*, 434 F. Supp. 963, 976 (E.D. Pa. 1977)).

Accordingly, this Court finds that the Board is an "arm of the State," and thus neither the Board nor Gallagher, its Chairperson, are persons under § 1983. As Judge Edmond V. Ludwig recently stated:

> plaintiff's claim against the Pennsylvania Board of Probation and Parole must be dismissed. As an agency of the Commonwealth of Pennsylvania, a suit against the Board of Probation and Parole is, in essence, a suit against the Commonwealth. The Supreme Court has held that a state may not be sued under § 1983 for either damages or injunctive relief. *Will v. Michigan Dept. of State Police*, 491 U.S. 58 (1989); *see also Abdul-Akbar v. Watson*, 775 F. Supp. 735 (D. Del. 1991).

Carotenuto v. Angelli, No.CIV.A.95-1981, 1995 WL 217619, at * 1 (E.D. Pa. Apr. 12, 1995); *See Kubis v. Pennsylvania Bd. of Probation and Parole*, No.CIV.A.95-5875, 1996 WL 253324, at * 4 (E.D. Pa. May 14, 1996); *McCullough v. Pennsylvania Bd. of Probation and Parole*, No.CIV.A.85-1640, 1985 WL 2843, at *1 (E.D. Pa. Oct. 2, 1985) (finding Board "is not a 'person' for purposes of § 1983 action" and "as a state agency . . . is protected by the Eleventh Amendment"). Therefore, the Plaintiffs' claims against the Defendants under § 1983 must be dismissed.

d. Persons Protected Under Title VI

The Defendants do not challenge the standing of the Students and Organization Plaintiffs to sue under Title VI. The Defendants, however, challenge the standing of the City and School District Plaintiffs. The Defendants argue that the City

of Philadelphia, the School District of Philadelphia and the Board of Education of the School District of Philadelphia are political subdivisions, and therefore not entitled to protection under Title VI. Furthermore, the Defendants argue that Edward G. Rendell, David W. Hornbeck and Floyd W. Alston have brought their purported claims in their official capacities, not in their individual capacities. The Defendants contend that because these Plaintiffs are suing only in their official capacities, they have no greater ability to proceed against the Defendants than the political subdivisions they represent. This Court must agree.

To this Court's knowledge, the Third Circuit has not yet considered the issue of whether Title VI creates a non-private cause of action. *See District of Philadelphia v. Pennsylvania Milk Marketing Bd.*, 877 F. Supp. 245, 251 n.3 (E.D. Pa. 1995) (stating that the Third Circuit had not yet decided whether a school district would be permitted to sue the state for Constitutional violations). Further, the Third Circuit has not yet decided whether a city has standing under Title VI to sue the state. This Court, therefore, looks to other circuits for guidance.

The Eleventh Circuit has stated that "[n]othing in Title VI or its legislative history suggests that Congress conceived of a state instrumentality as a 'person' with rights under this statute." *United States v. Alabama*, 791 F.2d 1450, 1454 (11th Cir. 1986) (finding that state university has no standing to sue under Title VI); *see DeKalb County School Dist. v. Schrenko*, 109 F.3d 680, 689 (11th Cir. 1997) (finding that political subdivision of a state, such as the DeKalb County School District and its Board of Education, may not maintain a suit for a breach of Title VI against the State in federal court). *See also Stanley v. Darlington County School Dist.*, 84 F.3d 707, 717 n.2 (4th Cir. 1995) (holding that Title VI does not authorize a political subdivision of a state to sue the state itself).

Title VI provides for a comprehensive scheme of administrative enforcement, and the Supreme Court has implicitly recognized a private right of action for individuals injured by a Title VI violation. *Alabama*, 791 F.2d at 1454 (citing *Cannon v. Univ. of Chicago*, 441 U.S. 677, 696-97 (1978)). "Absent any

indication of Congressional intent to grant additional rights under this statute to [political subdivisions] against the state, [this Court] declines to infer such a right of action by judicial fiat." *Id.* In the instant matter, the City of Philadelphia, the School District of Philadelphia and the Board of Education of the School District of Philadelphia are political subdivisions. Accordingly, they are not "persons" under Title VI, and their claims must therefore be dismissed pursuant to Rule 12(b)(6). Furthermore, Rendell, Hornbeck and Alston have brought their purported claims in their official capacities, not in their individual capacities. (See Pls.' Complaint ¶¶ 20, 25.) Because they have sued the Defendants in their official capacities, they have no more standing under Title VI than the political subdivisions that they represent. *Breard v. Greene*, 118 S. Ct. 1352, 1356 (1998) (finding that the Consul General, acting only in his official capacity, had no greater ability to proceed under § 1983 than did the country he represented). Similarly, the City and School Plaintiffs are not "persons" under Title VI, and their claims must therefore be dismissed pursuant to Rule 12(b)(6).

B. Motion to Dismiss or for Judgment on the Pleadings of Intervenors Jubelirer, Ryan, Rhoades and Stairs

1. Standard of Review Under Rule 12(b)(1)

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a district court can grant a dismissal based on the legal insufficiency of a claim. Dismissal is proper only when the claim clearly appears to be either immaterial and solely for the purpose of obtaining jurisdiction, or is wholly insubstantial and frivolous. *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1408-09 (3d Cir.), *cert. denied*, 501 U.S. 1222 (1991). When the subject matter jurisdiction of the court is challenged, the party that invokes the court's jurisdiction bears the burden of persuasion. *Kehr Packages*, 926 F.2d at 1409 (citing *Mortensen v. First Fed. Sav. and Loan Ass'n*, 549 F.2d 884, 891 (3d Cir.1977)). Moreover, the district court is not restricted to the face of the pleadings, but may review any evidence to resolve factual disputes concerning the existence of jurisdiction.

McCarthy v. United States, 850 F.2d 558, 560 (9th Cir. 1988) (citations omitted), *cert. denied*, 489 U.S. 1052 (1989).

2. Standard of Review Under Rule 12(b)(6)

See discussion *supra* Part II.A.1.

3. Standard of Review Under Rule 12(c)

A motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is treated under the same standard as a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Regalbuto v. City of Philadelphia*, 937 F. Supp. 374, 376-77 (E.D. Pa. 1995), *aff'd*, 91 F.3d 125 (3d Cir.) (table), *cert. denied*, 117 S. Ct. 435 (1996); *Constitution Bank v. DiMarco*, 815 F. Supp. 154, 157 (E.D. Pa. 1993). Consequently, judgment under Rule 12(c) will only be granted where the moving party has clearly established that no material issue of fact remains to be resolved and that the movant is entitled to judgment as a matter of law. *Regalbuto*, 937 F. Supp. at 377 (citing *Inst. for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc.*, 931 F.2d 1002, 1005 (3d Cir.), *cert. denied*, 502 U.S. 909 (1991)). Additionally, the district court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. *Regalbuto*, 937 F. Supp. at 377 (citing *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 406 (3d Cir. 1993)).

4. Analysis of Plaintiffs' Claims

In their Brief in support of their Supplemental Motion for Judgment on the Pleadings, the Legislative Intervenors allege that Count One of the Complaint fails to state a claim because § 602 of Title VI does not allow a private cause of action and none should be implied. In their Motion for Judgment on the Pleadings, the Legislative Intervenors assert that the Eleventh Amendment bars the Plaintiffs' claims against the Defendants in their official capacities. The Legislative Intervenors also argue that the Complaint fails to state a claim for disparate impact under existing caselaw. First, the Court will consider whether a private cause of action exists under Title VI. Sec-

ond, the Court will review whether the Claim brought by the Plaintiffs is barred by the Eleventh Amendment. Finally, the Court will consider whether the Complaint sucessfully states a claim for disparate impact under Title VI.

a. Private Cause of Action

The Supreme Court has stated that it is a "widely accepted assumption that Title VI creates a private cause of action." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 703 n.33 (1979). In *Cannon*, the Court found that Title IX of the Education Amendments of 1972 created a private right of action for victims of discrimination in education. *Id.* at 703. In making that holding, the Court stated that it had "no doubt that Congress ... understood Title VI as authorizing an implied private cause of action for victims of the prohibited discrimination." *Id.* The *Cannon* Court recognized that Title IX of the Civil Rights Act of 1964 "was patterned after Title VI...." *Id.* at 694. "Thus, the courts have consistently held the language of *Cannon* to be applicable in discussions of Title VI." *Chowdhury v. Reading Hosp. & Med. Center*, 677 F.2d 317, 320 (3d Cir. 1982) (citing *Pushkin v. Regents of the Univ. of Colorado*, 658 F.2d 1372 (10th Cir. 1981); *Camenisch v. Univ. of Texas*, 616 F.2d 127 (5th Cir. 1980), *vacated on other grounds and remanded*, 451 U.S. 390 (1981); *N.A.A.C.P. v. Med. Ctr. Inc.*, 599 F.2d 1247 (3d Cir. 1979)).

The Third Circuit recently confirmed that "[a] private right of action exists under section 601, but this right only reaches instances of intentional discrimination as opposed to instances of discriminatory effect or disparate impact." *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925, 929 (3d Cir. 1997). In this case, Plaintiffs allege discrimination solely on the basis of disparate impact. (See Pls.' Complaint at ¶ 1.) Therefore, Plaintiffs cannot avail themselves of a private right of action under § 601.

Plaintiffs do not specify, however, whether the Complaint should be read to imply a cause of action pursuant to § 601 or § 602 of Title VI. Section 602 authorizes and directs federal agencies to promulgate regulations implementing the provi-

sions of § 601. See 42 U.S.C. § 2000d-1. Pursuant to § 602, the Department of Education issued regulations which provide in relevant part:

> Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin: (i) Deny an individual any service, financial aid, or other benefit provided under the program; (ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program . . . . (2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the *effect* of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

34 C.F.R. §§ 100.3(b)(1) and 100.3(b)(2).

Although the Plaintiffs' Complaint does not actually cite either § 601 or § 602, as Judge Easterbrook of the Seventh Circuit observed: "Instead of asking whether the complaint points to the appropriate statute, a court should ask whether the relief is possible under any set of facts that could be established consistent with the allegations." *Bartholet v. Reishauer A.G. (Zurich)*, 953 F.2d 1073, 1078 (7th Cir. 1992) (citing, e.g.,

Conley v. Gibson, 355 U.S. 41 (1957)); *see* Fed. R. Civ. P. 8. Thus, this Court reads the Complaint to assert a cause of action under § 602.

The Legislative Intervenors contend that, like § 601, § 602 does not afford the Plaintiffs a private right of action. In *Alexander*, the Supreme Court interpreted *Guardians* as holding that "actions having an unjustifiable disparate impact on minorities could be redressed through agency regulations designed to implement the purposes of Title VI." *Alexander*, 469 U.S. at 293. In *Chester Residents*, however, the Third Circuit determined that neither *Guardians* nor *Alexander* definitively settled the availability of a private right of action under § 602.

Nevertheless, after conducting its own analysis, the Third Circuit concluded that "private plaintiffs may maintain an action under discriminatory effect regulations promulgated by federal administrative agencies pursuant to section 602 of Title VI of the Civil Rights Act of 1964." *Chester Residents*, 132 F.3d 925, 937. Pursuant to § 602, the Department of Education has issued regulations providing a private cause of action based on discriminatory impact. *See* 34 C.F.R. §§ 100.3(b)(2) and 100.3(b)(3). (prohibiting certain actions "which have the effect" of discriminating); *see also Elston v. Talledega County Bd. of Educ.*, 997 F.3d 1394, 1407 n.12 (11th Cir. 1993) (evaluating merits of disparate impact claim under 34 C.F.R. §§ 100.3(b)(2) and 100.3(b)(3)). Consequently, the Plaintiffs' claim of discrimination by disparate impact under § 602 and 34 C.F.R. §§ 100.3(b)(2) and 100.3(b)(3) will not be dismissed under the theory that Title VI does not create a private cause of action.

b. Eleventh Amendment Immunity

The Eleventh Amendment bars suits against the State both when it is the named party and when it is the party in fact. *Scheuer v. Rhodes*, 416 U.S. 232, 237 (1974), *overruled on other grounds, Davis v. Scherer*, 468 U.S. 183 (1984). "[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's

office. . . . As such, it is no different from a suit against the state itself." *Will*, 491 U.S. at 71.

In *Ex parte Young*, the Supreme Court recognized an exception for certain suits seeking declaratory and injunctive relief against state officers in their individual capacities. *Ex parte Young*, 209 U.S. 123 (1908). The Court has also stated that the exception to the Eleventh Amendment immunity established in *Ex parte Young*, also permits suits against state officials in their official capacities for ultra vires acts. *See Pennsylvania v. Union Gas Co.*, 491 U.S. 1, 26 (1989). In a recent case, the Supreme Court emphasized "the continuing validity of the *Ex parte Young* doctrine" and the "presumption" that "in most cases" when a plaintiff seeks prospective relief in federal court against state officers "ordinarily" the Eleventh Amendment is no bar. *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 117 S. Ct. 2028, 2034, 2038, 2040 (1997).

The Plaintiffs claim that the Eleventh Amendment does not bar their suit as one against the State because their case falls within the *Ex parte Young* exception to Eleventh Amendment immunity. The Plaintiffs claim that because they sue the Defendants in both their individual and official capacities, and seek to preclude the Defendants from continuing violations of federal law, their suit falls within the exception to Eleventh Amendment immunity established in *Ex parte Young*. This Court must agree.

Accepting as true the facts alleged in the Complaint and all reasonable inferences that can be drawn from them as proscribed by Rule 12 (b)(6), this Court must find that the instant action is solely an official capacity suit. The distinction between official-capacity and personal-capacity suits is, by all accounts, a difficult one. *See Kentucky v. Graham*, 473 U.S. 159, 165 (1985) ("[T]his distinction apparently continues to confuse lawyers and lower courts.").

> [T]he distinction between official-capacity suits and personal-capacity suits is more than "a mere pleading device." . . . State officers sued for damages in their official capacity are not "persons" for purposes

> of the suit because they assume the identity of the government that employs them. . . . By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal-capacity defendant thus fits comfortably within the statutory term "person."

Hafer v. Melo, 502 U.S. 21, 27 (1991).

The Supreme Court has stated that official-capacity suits "'generally represent only another way of pleading an action against an entity of which an officer is an agent.'" *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dept. of Soc. Servs.*, 436 U.S. 658, 690, n.55 (1978)). Suits against state officials in their official capacity therefore should be treated as suits against the State. *See Hafer v. Melo*, 502 U.S. 21, 26 (1991) (finding that although state officials literally are persons, an official-capacity suit against a state officer "is not a suit against the official but rather is a suit against the official's office"); *Monell*, 436 U.S. at 690 n.55 (finding that local government officials sued in their official capacities are "Persons" under § 1983 in those cases in which a local government would be suable in its own name); *see also Christy v. Pennsylvania Turnpike Comm'n*, 54 F.3d 1140, 1143, n.3 (3d Cir. 1995) (finding that a suit against the individual defendants in their official capacities is the same as a suit against the Pennsylvania Turnpike Commission). Indeed, when officials sued in this capacity in federal court die or leave office, their successors automatically assume their roles in the litigation. *Graham*, 473 U.S. at 165 (citing Fed. R. Civ. P. 25(d)(1); Fed. R. App. P. 43(c)(1)). Thus, the Plaintiffs' suit against Defendants Ridge, Gallagher, Hickok and Hafer in their official capacities "is no different from a suit against the State itself." *Hafer*, 502 U.S. at 26; *See Breard v. Greene*, 118 S. Ct. 1352, 1356 (1998) (finding that action brought by Consul General, acting only in his official capacity, could be nothing other than an official capacity suit); *Byrd v. Raines*, 521 U.S. 811, 2323 (1997) (Souter, J., concurring) (stating that "the Court is certainly right in concluding that appellees sue not in personal capacities, but as holders of seats in the Congress"); *Arizonans for Official English v. Arizona*, 117 S. Ct. 1055, 1057

(1997) (upholding the district court's ruling that suit brought against the Governor in her individual and official capacities was an official capacity suit).

A plaintiff can, however, bring a claim against a state official in his or her official capacity despite the Eleventh Amendment if the plaintiff is seeking prospective injunctive relief. *See Quern v. Jordan*, 440 U.S. 332, 337 (1979); *Edelman v. Jordan*, 415 U.S. 651, 676-77 (1974); *Ex Parte Young*, 209 U.S. at 155-56; *Helfrich v. Commonwealth of Pennsylvania Dept. of Military Affairs*, 660 F.2d 88, 90 (3d Cir. 1981); *Eckford-El v. Toombs*, 760 F. Supp. 1267, 1270 (W.D. Mi. 1991). Such claims are allowed because of the legal fiction that the officer being enjoined has acted in an ultra vires fashion, and is therefore not really acting in an "official capacity." *See Papasan v. Allain*, 478 U.S. 265, 276 (1986) (stating that *Ex Parte Young* "was based on a determination that an unconstitutional state enactment is void and that any action by a state official that is purportedly authorized by that enactment cannot be taken in an official capacity since the state authorization for such action is a nullity."); *Benning v. Bd. of Regents of Regency Univs.*, 928 F.2d 775, 778 (7th Cir. 1991) ("In *Ex Parte Young.*, the Supreme Court authorized a federal court injunction against a state official based upon the theory that his violation of federal law stripped him of his official authority."); *Laskaris v. Thornburgh*, 661 F.2d 23, 26 (3d Cir. 1981); cf. *Ex Parte Young*, 209 U.S. at 159.

In the instant matter, the Plaintiffs have made claims for injunctive relief. It is not clear at this juncture whether such relief would truly be prospective and therefore not barred by the Eleventh Amendment. *See Papasan*, 478 U.S. at 278; *Hutto v. Finney*, 437 U.S. 678, 690 (1978) ("the difference between retroactive and prospective relief 'will not in many instances be that between day and night.'") (quoting *Edelman v. Jordan*, 415 U.S. 651, 667 (1974); *Laskaris*, 661 F.2d at 26; cf. *Benning*, 928 F.2d at 778. Accordingly, at this juncture, this Court cannot find that the Plaintiffs' claims are barred by the Eleventh Amendment.

c. Disparate Impact

The Plaintiffs base their claim on the federal Department of Education's regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, *et seq.* In their Complaint, the Plaintiffs allege discrimination solely on the basis of disparate impact. (*See* Pls.' Complaint at ¶ 1.) The Plaintiffs assert, in substance, that the discriminatory impact arises because the uniformly applied state formula for allocating basic education funds among the 501 school districts does not bring about the same result in Philadelphia as it might in another, more affluent district, because of Philadelphia's special needs. The Plaintiffs' factual allegations, even when assumed to be true for purposes of this motion, do not, as a matter of law, state a disparate-impact claim. The Plaintiffs' Complaint is merely a "we-need-more-money" allegation of a type that has been held non-actionable.

Courts considering claims under analogous Title VI regulations have held that a plaintiff alleging discrimination in program receiving federal financial assistance must make prima facie showing that alleged conduct has a disparate impact. *See New York Urban League, Inc. v. State of N.Y.*, 71 F.3d 1031, (2d Cir. 1995) (citing Civil Rights Act of 1964, § 601, 42 U.S.C.A. § 2000d); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985). "A plaintiff alleging a violation of the [Department of Education] regulations must make a prima facie showing that the alleged conduct has a disparate impact." *See Georgia State Conference*, 775 F.2d at 1417.

"[A] plaintiff may establish a prima facie case of disparate impact by showing that use of the test causes the selection of applicants . . . in a racial pattern that significantly differs from that of the pool of applicants." *Bridgeport Guardians, Inc. v. City of Bridgeport*, 933 F.2d 1140, 1146 (2d Cir.). Such a showing can be established through the use of statistical evidence which discloses a disparity so great that it cannot reasonably be attributed to chance. *See Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 307-08 (1977). To establish a prima facie case, the statistical disparity must be sufficiently substan-

tial to raise an inference of causation. *See Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994-95 (1988).

In *Alexander v. Choate*, 469 U.S. 287 (1985), the Supreme Court applied section 504 of the Rehabilitation Act to a factual situation somewhat similar to that presented here. In that case, Tennessee had reduced from 20 to 14 the number of inpatient hospital days per year that it would reimburse hospitals on behalf of a Medicaid recipient. Statistical evidence showed that disabled persons were more likely than non-disabled persons to require more that 14 days of hospitalization per year, and accordingly challenged the reduction as violative of section 504. The Supreme Court first assumed that a disparate impact would be sufficient to state a claim under section 504. *See id.* at 299. It held, however, that section 504 requires that "an otherwise qualified handicapped individual must be provided with meaningful access to the benefit that the grantee offers." *Id.* at 301 (emphasis added). The Court noted that the benefit itself "cannot be defined in a way that effectively denies otherwise qualified handicapped individuals the meaningful access to which they are entitled; to assure meaningful access, reasonable accommodations in the grantee's program or benefit may have to be made." *Id.*

Applying these standards, the Court determined that the relevant benefit was the 14-day period of covered hospitalization. The Court upheld the benefit limitation, reasoning that it "does not exclude the handicapped from or deny them the benefits of the 14 days of care the State has chosen to provide." *Alexander*, 469 U.S. at 302. "The reduction in inpatient coverage will leave both handicapped and non-handicapped Medicaid users with identical and effective hospital services fully available for their use, with both classes of users subject to the same durational limitation." *Id.*

In the instant case, the Plaintiffs do not assert that the Executive Branch Officers calculate funding for the School District any differently than they calculate it for other districts or that the School District receives any less Commonwealth funding than other school districts. Rather, the Plaintiffs want the School District to get more than the statutory formula provides under the theory that factors external to the state

subsidy program make education more expensive or funding shortfalls greater in Philadelphia. Under *Alexander*, this scenario does not state a cause of action for disparate impact. *See Alexander*, 469 U.S. at 287; *see also Cerepac v. Health and Hospitals Corp.*, 147 F.3d 165, 167 (2d Cir. 1998) (stating that "the disabled do not have a right to more public services than the non-disabled, even if the disabled need them") (quoting *Lincoln Cerepac v. Health and Hospital Corp.*, 977 F. Supp. 274, 280 (S.D. N.Y. 1997)). Likewise, "the [School District] do[es] not have a right to more public services than [other school districts], even if the [School District] need[s] them." *Id.* Accordingly, the Plaintiffs' claims arising under Title VI and its implementing regulations are dismissed for failure to state a claim.

C. Petition of the United States for Leave to Participate

The United States has filed a petition for leave to participate in this action as *amicus curiae*. The United States alleges that it has an interest in ensuring that both Title VI and its implementing regulations may be enforced in federal court by private parties. In the interest of justice this Court shall grant the petition.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID POWELL, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
THOMAS J. RIDGE, et al.	:	NO. 98-1223

FINAL JUDGMENT

AND NOW, this 18th day of November, 1998, upon consideration of the Defendants' Motion to Dismiss the Plaintiffs' Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Docket No. 7), the Plaintiffs' response thereto (Docket No. 12), the Defendants' reply thereto (Docket No. 15), the Defendants' Supplemental Motion to Dismiss (Docket No. 25), the Motion to Dismiss of the Legislative Intervenors (Docket No. 16), the Plaintiffs' response thereto (Docket No. 18), the Brief of Legislative Intervenors for Judgment on the Pleadings (Docket No. 23), the Legislative Intervenors' Reply Brief in Support of their Motion to Dismiss and for Judgment on the Pleadings (Docket No. 24), and the Plaintiffs' Opposition to Intervenors' Supplemental Motion for Judgment on the Pleadings and Defendants' Supplemental Motion to Dismiss Complaint (Docket No. 26); also before the court is the petition of the United States for leave to participate as *amicus curiae* in this action (Docket No. 13), Brief of the United States as *Amicus Curiae* in Opposition to Defendant Intervenors' Motion to Dismiss or for Judgment on the Pleadings (Docket No. 20), and United States' Motion to Further Particpate as *Amicus Curiae* and to Intervene of Right (Docket No. 21), IT IS HEREBY ORDERED that:

(1) all claims arising under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d-2000d-4a (1994), and certain regulations promulgated by the United States Department of Education's Title VI implementing requirements, 34 C.F.R. §§ 100.3(b)(1) and 100.3(b)(2) (1997) ("Count One") brought by

the Plaintiffs[6] against Defendants: 1) Thomas J. Ridge, the Governor of the Commonwealth of Pennsylvania; 2) Dr. James Gallagher, Chairperson of the Board of Education for the Commonwealth of Pennsylvania; 3) Dr. Eugene Hickok, the Secretary of Education for the Commonwealth of Pennsylvania; and 4) Barbara Hafer, the Treasurer of the Commonwealth of Pennsylvania are **DISMISSED** with prejudice;

(2) all claims brought by the Plaintiffs arising under the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1994) ("Count Two") against Defendants: 1) Thomas J. Ridge, the Governor of the Commonwealth of Pennsylvania; 2) Dr. James Gallagher, Chairperson of the Board of Education for the Commonwealth of Pennsylvania; 3) Dr. Eugene Hickok, the Secretary of Education for the Commonwealth of Pennsylvania; and 4) Barbara Hafer, the Treasurer of the Commonwealth of Pennsylvania are **DISMISSED** with prejudice; and

(3) the motion of the United States for leave to participate as *amicus curiae* in this action is GRANTED.

BY THE COURT:

HERBERT J. HUTTON, J.

6. The Plaintiffs include: "Students who attend public school in Philadelphia, their parents and guardians, and organizations that represent their interests ('Students and Organization Plaintiffs'); the School District of Philadelphia, the Board of Education of the School District of Philadelphia, and officials who lead the School District ('School District Plaintiffs'); and the Mayor of the City of Philadelphia ('City Plaintiffs')". (Pls.' Compl. ¶ 1).

APPENDIX C

Title 42, U.S.C:

§2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under Federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub.L. 88-352, Title VI, § 601, July 2, 1964, 78 Stat. 252.)

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom

such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.
(Pub.L. 88-352, Title VI, § 602, July 2, 1964, 78 Stat. 252.)

APPENDIX D
34 CFR 100.3

TITLE 34 — EDUCATION
SUBTITLE B — REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION
CHAPTER I — OFFICE FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION
PART 100 — NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

34 CFR 100.3

§ 100.3 Discrimination prohibited.

(a) General. No person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this part applies.

(b) Specific discriminatory actions prohibited. (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(3) In determining the site or location of a facilities, an applicant or recipient may not make selections with the effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any programs to which this regulation applies, on the ground of race, color, or

national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this regulation.

(4) As used in this section, the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph and paragraph (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6) (i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

(c) Employment practices. (1) Where a primary objective of the Federal financial assistance to a program to which this regulation applies is to provide employment, a recipient may not (directly or through contractual or other arrangements) subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities), including programs where a primary objective of the Federal financial assistance is (i) to reduce the employment of such individuals or to help them through employment to meet subsistence needs, (ii) to assist such individuals through employment to meet expenses incident to the commencement or continuation of their education or training, (iii) to provide work experience which contributes to the education or training of such individuals, or (iv) to provide remu-

nerative activity to such individuals who because of handicaps cannot be readily absorbed in the competitive labor market. The following, under existing laws, have one of the above objectives as a primary objective:

(A) Projects under the Public Works Acceleration Act, Pub. L. 87-658, 42 U.S.C. 2641-2643.

(B) Work-study under the Vocational Education Act of 1963, as amended, 20 U.S.C. 1371-1374.

(C) Programs assisted under laws listed in Appendix A as respects employment opportunities provided thereunder, or in facilities provided thereunder, which are limited, or for which preference is given, to students, fellows, or other persons in training for the same or related employments.

(D) Assistance to rehabilitation facilities under the Vocational Rehabilitation Act, 29 U.S.C. 32-34, 41a and 41b.

(2) The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the foregoing provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) Indian Health and Cuban Refugee Services. An individual shall not be deemed subjected to discrimination by reason of his exclusion from the benefits of a program limited by Federal law to individuals of a particular race, color, or national origin different from his.

(e) Medical emergencies. Notwithstanding the foregoing provisions of this section, a recipient of Federal financial assistance shall not be deemed to have failed to comply with para-

graph (a) of this section if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health, and such service or other benefit cannot be provided except by or through a medical institution which refuses or fails to comply with paragraph (a) of this section.

HISTORY:

[45 FR 30918, May 9, 1980]

AUTHORITY:

(Sec. 601, 602, 604, Civil Rights Act of 1964; 78 Stat. 252, 253, 42 U.S.C. 2000d, 2000d-1, 2000d-3)

APPENDIX E

Title 24, Pennsylvania Statutes:

§ 6-601. Information to incoming directors for tax levy and budget

The board of school directors of every school district shall annually, through its proper officers, furnish to the incoming board of school directors all necessary information and such detailed statements as may be needed by it to provide for the annual tax levy and to prepare the annual estimate of expenditures.

§ 6-602. Tax levies

All taxes required by any school district, in addition to the State appropriation, shall be levied by the board of school directors therein.

§ 6-603. Only one annual tax levy

There shall be but one levy of school taxes made in each school district in each year, which shall be assessed, levied, and collected for all the purposes provided in this act, and shall be uniform throughout the territorial limit of each school district, except that those school taxes which school districts are empowered to levy under the authority of the act of June 25, 1947 (P.L. 1145), as amended,[1] may be levied at any time during the period authorized for the assessment and levy of any school taxes: Provided, That (1) where two or more school districts have voted to become a union school district in accordance with the provisions of this act and prior to the actual creation of the union school district, the school board members by a majority vote of all the members comprising said school boards shall assess and levy a uniform school tax in all of the districts comprising said union school district for general revenue purposes necessary to operate said union school district commencing the first day of July following the vote establishing said union district, and (2) whenever hereafter a school district of the second, third, or fourth class shall be annexed to and merged in, and become a part of a school district of the first class or first class A, or shall be merged into

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and become a part of a school district of the first class A as a reorganized district under the provisions of Article II, subdivision (i) of this act, the board of public education of said school district of the first class or first class A shall have power to levy a special school tax on the territory which comprised said annexed and merged school district or on the territory which comprised the school district merged into and becoming a part of a school district of the first class A as a reorganized district, to provide for the expense and maintenance of the schools thereof from the end of the school year of said annexed and merged or merged by force of reorganization school district to the beginning of the next school year in said school district of the first class or first class A, and to provide for and pay the floating indebtedness of said annexed and merged or merged by force of reorganization school district. Said levy shall not exceed one-half of the last previous total annual millage levied by said school district of the first class or first class A.

§ 6-604. Property acquired by state for water conservation or flood prevention

Whenever the Commonwealth of Pennsylvania shall, for the purpose of conservation of water or to prevent flood conditions, acquire any lands and property within the limits of any school districts, and shall, by such acquisition, reduce the amount of property within the district taxable for school purposes, the board of school directors shall immediately after such acquisition certify to the Auditor General and to the Superintendent of Public Instruction the assessed valuation of such lands and property at the time of such acquisition.

After any such acquisition the board of directors shall from year to year, at the time of its annual levy of taxes for school purposes, certify to the Auditor General and Superintendent of Public Instruction the rate of its levy for the next school year. Thereupon, the Superintendent of Public Instruction shall ascertain the amount of taxes which would have been collected upon the assessed valuation, certified as hereinbefore provided, at the rate of the levy so certified. Upon the ascertainment of such amount, the same shall be paid by the Commonwealth from time to time from the general fund.

§ 6-605. Affidavit of uncollectability of taxes on real property

Each certificate which any collector of school taxes makes of delinquent school taxes, levied upon real estate upon which there is no personal property from which the same can be collected, shall be accompanied by the affidavit of the tax collector that, after the proper efforts, he could not find sufficient personal property out of which the taxes or any part thereof could be made or collected as provided by law. Such affidavit shall be conclusive as to that fact in so far as it may affect the lien of said taxes or the title of a purchaser at a sheriff's sale thereunder. In the event any such collector shall make any wilfully false return he shall be liable therefor to any person or persons injured thereby.

§ 6-606. Collection of taxes where new district created

In case a new school district is created after taxes have been assessed and levied in the district out of which it is partly or wholly created, but before the beginning of the school year therein, then, in such cases, all the taxes assessed and levied in said year by the board of school directors, on the property or residents within the limits of the new school district, shall be collected by the tax collector of the district out of which the new district was created, and all such taxes collected on property or from residents within the limits of a new school district shall be paid over by him to the treasurer of such new school district.

§ 6-607. Payments; how made; limitations

All payments made by the board of school directors of any school district from the school funds shall be made by proper school orders drawn on the treasurer. No school order shall be authorized by the board, or signed by the president or secretary of any board of school directors, unless there are sufficient funds in the treasury of the district to pay the same, and no school order shall be made payable at any time in the future, or draw interest. A separate school order shall be drawn for each account or payment: Provided, That the monthly payroll of teachers, janitors, or other employes may be included on one or more orders, which may be made pay-

able to the order of such person or persons, and distributed in such manner as the board of school directors in any school district may determine.

In all school districts of the first class, each school order shall state on its face the particular item of the annual school estimate upon which it is drawn.

In all school districts of the second, third, and fourth class, each school order shall state on its face the particular class of expenditure of the annual school budget upon which the same is drawn.

§ 6-608. Liability for improper school orders

Any school director voting for, or any officer approving, a school order for the payment of school funds for any other purpose, or drawn in any other manner, than that provided in this act, shall, together with the surety or sureties on his bond, in addition to the penalty herein provided, be individually liable to the district for the amount thereof: Provided, That on appeal from an auditor's report, it shall be within the discretion of the court having jurisdiction of the matter to sustain or not to sustain a surcharge, where it appears that the appellant or appellants acted honestly and in good faith for the best interests of the school district and where no loss or damage to the school district resulted from the action of such appellant or appellants.

§ 6-609. Budgeted funds not to be used for other purposes or exceeded

The amount of funds in any annual estimate by any school district, at or before the time of levying the school taxes, which is set apart or appropriated to any particular item of expenditure, shall not be used for any other purpose, or transferred, except by resolution of the board of school directors receiving the affirmative vote of two-thirds of the members thereof.

No work shall be hired to be done, no materials purchased, and no contracts made by any board of school directors which will cause the sums appropriated to specific purposes in the budget to be exceeded.

Whenever Federal or State funds are made available to school districts, such funds may be expended by the board of school directors for the purposes for which they are made available even though provisions therefor were not made in the annual estimates or budget of such school district. Whenever the General Assembly shall enact a law providing for the levy of taxes within a school district, the revenues from the taxes so levied may be expended by the board of school directors for general school purposes even though provisions therefor were not made in the annual estimates or budget of such school district for the fiscal year within which such law was enacted.

§ 6-610. Use of school funds; illegal use

The board of school directors in every school district shall have the right to use and pay out, in the manner herein provided, any funds of the district for any and all of the purposes therein provided, subject to all the provisions of this act.[1] The use or payment of any public school funds of any school district, in any manner or for any purpose not provided in this act, shall be illegal.

§ 6-611. Enforcement of judgments against school districts

If any judgment is obtained against any school district and the same is not paid as required, the same may be collected as follows and not otherwise:—

The plaintiff in any such judgment shall petition the court of common pleas in which such judgment was obtained, or in which any transcript of a judgment obtained against any school district before any magistrate, alderman, or justice of the peace, is filed, whereupon the court shall issue a writ in the nature of a mandamus execution, directed to the directors and treasurers of the school district against which such judgment was obtained, commanding them to pay the amount of such judgment, together with interest and costs, out of any unappropriated funds of such school district, and in case there are no unappropriated funds of such school district, then out of

1. 24 P.S. § 1-101 et seq.

the first funds that shall be received by said school district. The court may enforce obedience to such writ by attachment on proper cause being shown.

§ 6-612. Counsel fees on appeals from county auditors' reports

When an appeal is taken from the county auditors' report or settlement of the account of any public officer, in accordance with the laws relating thereto, and such appeal results favorably to the appellants in such a manner that money is recovered for any school district, the court hearing such appeal shall make an order to pay a counsel fee which it deems just and reasonable to the counsel representing such appeal, out of the funds so recovered.

§ 6-621. Designation of depositories; bond

The board of school directors in any school district shall designate one or more banks or bank and trust companies as a depository or depositories for its school funds. No such depository shall be named unless it receives a majority of the votes of the entire school board elected or appointed in such district. Each such depository before receiving any of the school funds shall, except as hereinafter otherwise provided, furnish a proper bond, in such amount and with such surety or sureties as may be required, to be approved by the board of school directors, and conditioned upon the faithful keeping, paying out, and accounting for all of the school funds and property of said school district that may come into its hands, as well as for the payment of all interest on money deposited in such depository in accordance with any contract made by it with said school district.

§ 6-622. Collateral in lieu of bond

(a) In lieu of one or more surety bonds, the deposit of school funds may be secured by the deposit with the board of school directors, or with any bank or trust company, other than the designated depository, within the Commonwealth which may be agreed upon, of bonds or other interest-bearing obligations of the United States, of the Commonwealth of

Pennsylvania, or of any state of the United States, of the General State Authority, and other authorities created by the General Assembly of the Commonwealth of Pennsylvania for the payment of which the faith and credit of the authority is pledged, and the obligations of any municipality authority, if such obligations of the municipality authority are authorized investments for a fiduciary, pursuant to the act of May 26, 1949 (P.L. 1828),[1] known as the "Fiduciaries Investment Act of 1949", and its amendments, or other bonds to be approved by the board: Provided, That in school districts of the second, third, and fourth classes, such securities shall be only bonds or other interest-bearing obligations of the United States, of this Commonwealth, of any state of the United States, or bonds of any county, city, borough, incorporated town, township, school district, or other political subdivision of this Commonwealth, or of any other state of the United States, or of the General State Authority, and other authorities created by the General Assembly of the Commonwealth of Pennsylvania for the payment of which the faith and credit of the authority is pledged, and the obligations of any municipality authority, if such obligations of the municipality authority or authorized investments for a fiduciary, pursuant to the act of May 26, 1949 (P.L. 1828), known as the "Fiduciaries Investment Act a 1949", and its amendments, which has not at any time within the five years immediately preceding the date of the deposit of such bonds by the depository failed punctually to pay the matured principal and interest on all of its indebtedness.

(b) When collateral security is thus deposited in lieu of one or more surety bonds, the total amount of such bonds and obligations thus deposited, measured by their actual market value, less the total indebtedness of the school district to the depository and any amount that is insured under the provisions of section 623,[2] shall be equal to the amount of the deposits secured and twenty per centum in addition. All such bonds and obligations shall be accompanied by a proper assignment or power of attorney for their transfer. Such trust

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deposit, in the event of any depreciation in value, shall be maintained, on request in writing of the board of school directors, at the amount provided herein.

§ 6-623. Insurance of deposits of funds

All moneys belonging to any school district or held by any school district for any purpose, and deposited with any banking institution in this Commonwealth, may be insured with the Federal Deposit Insurance Corporation, or any other corporation hereafter organized by the United States for the purpose of insuring deposits, up to the amount to which such corporation is or may hereafter be authorized to insure deposits in any one name. When so insured, the school district shall not require such banking institution to furnish additional bond, insurance or security to cover the amount of such deposits so insured.

§ 6-624. Monthly reports by depositories

Every bank or trust company designated as a depository for school funds in any school district shall, at the end of every month, make a report to the school treasurer, to the board of school directors, and to the school controller, if any, stating the amount of school funds deposited with it during the month, together with the balance on hand at the beginning of the month, as well as the amount of school funds disbursed by it during the month, any accrued interest paid, or due, and the balance remaining on hand at the time of making the report.

§ 6-625. Deposit of school funds; treasurer relieved of liability; school orders

The funds of the school district shall be deposited, as directed by the board of school directors, in a designated depository, by the school treasurer, in the name of the school district. After any funds have been deposited with such regularly designated depository by any school treasurer, he shall thereafter be relieved from all liability therefor, and all school orders drawn on the school treasurer for any funds so deposited by him shall be endorsed by said treasurer.

§ 6-631. Power to incur debt; limitations

The board of school directors in any school district may, in any year, create and incur an indebtedness against such school district and issue bonds to secure the same, payable as provided by the act of July 12, 1972 (Act No. 185), known as the "Local Government Unit Debt Act,"[1] or any amendment or re-enactment thereof, for any or all of the following purposes:

(1) To purchase or acquire proper sites, buildings or grounds for school use, or any lands additional to any existing school sites or grounds;

(2) To erect, enlarge, equip or furnish any building for school use;

(3) To repair, remodel or rebuild any building of the school district;

(3.1) To lease for an extended preiod building facilities or portions of buildings constructed for school use and/or existing building facilities or portions of existing building facilities altered for school use;

(4) To purchase school buses;

(5) To pay any indebtedness incurred by any municipality for or on account of the school district or for school purposes, and required by this act to be assumed by the school district;

(6) To pay any refund of taxes decreed by an order of court;

(7) To refund certain bonds, as hereinafter provided;

(8) To fund floating indebtedness incurred for current expenses and debt service;

(9) To fund temporary indebtedness incurred for permanent improvements, or in anticipation of proceeds from a bond issue;

(10) To purchase or acquire buildings for school use.

The indebtedness of any school district shall never exceed fifteen (15) per centum of the last assessed valuation of property taxable for school purposes therein.

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1. 53 P.S. 6780-1 et seq.

§ 6-632. Assent of electors; when necessary and when not necessary

The assent of the electors shall be required in all school districts of the second, third and fourth class, to issue bonds which will incur any new debt or increase the indebtedness to an amount in excess of five (5) per centum of the assessed valuation of property taxable for school purposes therein. The assent of the electors shall be required in school districts of the first class and first class A to issue bonds which will incur any new debt or increase the indebtedness to an amount in excess of five (5) per centum of the assessed valuation of property taxable for school purposes therein. The board of school directors of any school district of the first, first class A, second, third, or fourth class shall have authority, without the assent of the electors, to issue bonds which will incur upon its own authority any amount of such indebtedness not in excess of five (5) per centum of the last assessed valuation of property taxable for school purposes therein.

If the amount of bonds of any bond issue maturing in any single year is in excess of five percent of the total amount of such bond issue, the amount in excess of five percent of such bond issue may be refunded by the board of school directors of any school district, upon its own authority, without submitting any such refunding bond issue to a vote of electors.

Any school district which calls bonds for payment prior to the date of maturity may issue bonds for the purpose of paying any or all such bonds as may be called for payment. All bonds issued for the purpose of refunding bonds shall be issued as hereinbefore provided for the issuing of such bonds.

§ 6-633. Reports to Secretary of Education; withholding state appropriations

It shall be the duty of the Secretary of Education, to require, as part of the annual financial reports of all of the school districts, a list of the amount of bonds or other indebtedness that becomes due during the fiscal year, together with the amount paid on each item of indebtedness. In case of failure on the part of any school district to furnish such report at the required time after the close of the fiscal year, the Secre-

tary of Education may withhold any State appropriation that may become due to any such school district until such report covering information regarding the maturities of indebtedness and payments on same during the preceding fiscal year, as required herein, and any other information which he may require of a school district, has been received. In all cases where the board of directors of any school district fails to pay or to provide for the payment of any indebtedness at date of maturity or date of mandatory redemption or on any sinking fund deposit date, or any interest due on such indebtedness on any interest payment date, or on any sinking fund deposit date in accordance with the schedule under which the bonds were issued, the Secretary of Education shall notify such board of school directors of its obligation and shall withhold out of any State appropriation due such school district an amount equal to the sum of the principal amount maturing or subject to mandatory redemption and interest owing by such school district, or sinking fund deposit due by such school district, and shall pay over the amount so withheld to the bank or other person acting as sinking fund depositary for such bond issue. Amended 1998, Dec. 21, P.L. 1194, No. 154, § 2, imd. effective.

§ 6-634. Temporary debt

Any school district having no indebtedness, or whose indebtedness, incurred or created without the assent of the electors thereof, is less than five (5) per centum of the total valuation of property taxable for school purposes therein, may, at any time, for the purpose of providing funds in any fiscal year for current expenses and debt service, for permanent improvements, the acquiring of school buses, or in anticipation of proceeds from a bond issue already officially authorized and (except in school districts of the first class) approved by the Department of Community Affairs, with such limitations and for such length of term as hereinafter provided, by or through its board of school directors, incur, in addition to any bonds therein authorized, a temporary debt, or borrow money, and issue an obligation or obligations therefor, under the seal of the district, if any, properly executed by the president and attested by the

secretary thereof, and bearing interest not exceeding the legal rate, but no such obligation shall be sold for less than par. The incurring of any such temporary debt, or borrowing money upon such obligation, shall receive the affirmative vote of not less than two-thirds of the members of the board of school directors therein.

In addition thereto, any school district may, as hereinbefore provided, incur a temporary debt or borrow money for permanent improvements, where no bond issue has been previously officially authorized, and refund such temporary indebtedness by the issue of bonds, in the manner provided by law, when the exact amount required for such permanent improvement becomes known.

§ 6-635. Limit on temporary debt for current expenses and debt service

The total amount of temporary indebtedness incurred for current expenses and debt service shall, at no time, exceed an amount equal to the State appropriations not received but payable during the fiscal year, and the tax levied upon property taxable for school purposes within such school district, and remaining uncollected and unpledged for the current fiscal[1] year. All such loans shall be paid out of the receipts available, or pledged for the repayment thereof when and as the funds are received. The total amount of the temporary indebtedness for such purpose remaining unpaid at the close of the fiscal year shall become an obligation upon the following year's budget, and be included therein.

§ 6-636. Emergency loans for current expenses and debt service

(a) In case of an emergency, any school district in any fiscal year, after borrowing money in anticipation of current revenues to the full extent permitted by the provisions of section six hundred forty (640) of this act,[1] and finding the receipts

1. Enrolled bill omits "fiscal".

1. 24 P.S. § 6-640.

from said loans, together with all other receipts, to be inadequate to meet the expenditures of the official fiscal year's budget, may appeal to the State Superintendent of Public Instruction for permission to incur a temporary debt for the purpose of providing funds for current expenses and debt service and shall present to the State Superintendent of Public Instruction, or his agent, such financial statements or reports as he may require to give him adequate facts relative to the necessity of such increase in indebtedness. The State Superintendent of Public Instruction is hereby authorized, after due examination of the need of such school district, either to refuse or grant permission to such school district to borrow additional funds for current expenses and debt service beyond the amount permitted by the provisions of section six hundred forty (640) of this act. In case of approval, he shall designate the maximum length of the term and shall set a maximum limit of the total amount of such temporary indebtedness that such school district may incur during the fiscal year in addition to all temporary indebtedness for other purposes outstanding at the time of such approval.

(b) All temporary indebtedness, for the purpose of current expenses and debt service in school districts of the first class, shall not exceed four tenths of one per centum (4/10%), and in school districts of the second class, shall not exceed three fourths of one per centum (3/4%), and in school districts of the third and fourth class, shall not exceed one (1) per centum of the total amount of property taxable for school purposes in such district, and the total indebtedness for such purposes, together with all other indebtedness incurred without authorization by vote of the electors of the district, shall, at no time, exceed five (5) per centum of the last total assessed valuation of the property taxable for school purposes therein.

§ 6-637. Limit on temporary debt for permanent improvements, etc.; tax levy

The total amount of temporary indebtedness incurred in any school district for the purpose of permanent improve-

ments and the acquiring of school buses except obligations incurred under the provisions of section six hundred forty of this act,[1] shall never exceed five (5) per centum of the last assessed valuation of property taxable for school purposes therein. Except where such temporary indebtedness is to be refunded by the issue of bonds, as hereinbefore authorized, at or before the time of incurring such indebtedness for such purpose, provision shall be made for the collection of an annual tax, sufficient to pay the interest and also the principal thereof within the term of such indebtedness, as provided by law.

§ 6-639. Limit on temporary debt in anticipation of proceeds of bond issue; payment

The total amount of temporary indebtedness incurred in anticipation of proceeds from a bond issue already officially authorized and approved by the Department of Internal Affairs, as hereinbefore provided, shall not exceed seventy-five (75) per centum of the full amount of bonds authorized by such bond issue.

All obligations, other than bonds, issued by any school district in anticipation of proceeds from a bond issue already officially authorized and approved by the Department of Internal Affairs, shall be paid in full, together with interest, out of the proceeds of such bond issue within one year and six months from the date of authorization of such bond issue.

§ 6-640. Borrowing in anticipation of current revenue

School districts may borrow money in anticipation of current revenues, to an amount not exceeding such anticipated current revenues, which shall be pledged for the payment of such loan or loans, and issue notes or other form of obligation, executed by the president of the board of school directors and attested by the secretary of the board under the seal of the school district, securing such loans. Such notes, or other form of obligation, shall mature and be payable during the current

1. 24 P.S. § 6-640.

fiscal year in which such money is borrowed. No such borrowing shall constitute an increase of indebtedness within the meaning of Article nine, section eight of the Constitution of Pennsylvania, or of the "Municipal Borrowing Law" of June twenty-fifth, one thousand nine hundred forty-one (Pamphlet Laws 159),[1] or of any of the provisions of this act,[2] and shall not require the approval of the Department of Internal Affairs. Such notes shall bear interest at a rate not exceeding six (6) per centum per annum, payable at maturity or in advance, and may be sold at either public or private sale for not less than par. If such loans are not repaid in whole or in part during the fiscal year in which they are made, they, or such amounts as remain unpaid, shall become an obligation upon the following year's budget and shall be included therein and paid not later than the first day of July of such following year, in school districts of the first class, and not later than the first day of November of such following year, in school districts of the second, third, and fourth class. The incurring of such obligations shall receive the affirmative vote of not less than two-thirds of the members of the board of school directors.

§ 6-651. Fiscal year

In all school districts of the first class and first class A, the fiscal year shall begin on the first day of January in each year: Provided, That the Board of Public Education of any district of the first class or first class A may, by resolution adopted by two-thirds vote of the members thereof at a meeting of the board after not less than ten days' notice of the fact that such resolution would be presented for action at such meeting, fix the fiscal year of such school district so as to begin on the first day of July in each year instead of on the first day of January as hereinabove provided.

§ 6-652. Tax levy; purposes; limitations

In all school districts of the first class the school taxes for the following fiscal year shall be levied annually, by the

1. 53 P.S. § 6101 (repealed; see now, 53 P.S. § 6780-1 et seq.).
2. 24 P.S. § 1-101 et seq.

board of public education thereof, on or after the second Monday of November and before the first Monday of December following. In all school districts of the first class A the school taxes for the following fiscal year shall be levied annually by the board of public education on or after the first Monday of December and before the end of the current fiscal year. The board of public education thereof shall annually levy a tax on each dollar of the total assessments of all property assessed and certified for taxation in said district, which tax shall be ascertained, determined, and fixed by adding together the following:

(1) An amount which, with all moneys received from the Commonwealth applicable thereto, shall be sufficient to pay the minimum salaries and increments of the teaching and supervisory staff thereof as fixed and provided by law and to pay the contributions of said district to the teachers' retirement system. For the purpose of computing the amount required to pay the minimum salaries and increments fixed by law, but without otherwise limiting the rights of the district to employ teachers or other employees, (i) The number of teachers on the salary schedule of the elementary schools shall not exceed one for every thirty pupils in average daily membership in such schools, (ii) The number of teachers on the salary schedule of the junior high schools shall not exceed one for every twenty-two pupils in average daily membership in such schools, (iii) The number of teachers on the salary schedule of the senior high schools shall not exceed one for every twenty-two pupils in average daily membership in such schools, (iv) The number of teachers with salaries and increments fixed by law, on any salary schedule now established or hereafter established, and not specially mentioned in this act, shall not exceed one for every twenty-two pupils in average daily membership, (v) The number of principals in the elementary schools, and the principals in charge of all other character of schools now established or hereafter established, and not specially mentioned in this act, shall not exceed one for every six hundred pupils in average daily membership in such schools, (vi) The number of principals in the junior and senior high schools shall not exceed one for every twelve hundred pupils in aver-

age daily membership in such schools, (vii) The number of supervisors in all schools shall not exceed one for every fifteen hundred pupils in average daily membership, (viii) The number of attendance officers and home and school visitors shall not exceed one for every two thousand pupils in average daily membership in all elementary and secondary schools, (ix) In all adult and extension school classes, the number of teachers shall not exceed one for every twenty pupils in average daily membership in such schools.

The salary and increments, fixed by law, of members of the teaching and supervisory staff whose number is not in some manner limited hereby, shall not be included within the purposes authorized by clause (1) of this section, but shall be construed and regarded as constituting expenses within the meaning of clause (3) of this section.

Average daily membership, as used herein, shall be based upon membership during the preceding school term.

(2) An amount sufficient to pay the interest on, and retire at maturity the principal of, the indebtedness of said district incurred as authorized by law.

(2.1) An amount sufficient to pay any rentals agreed to be paid to the State Public School Building Authority or any other authority created by the General Assembly, having State-wide jurisdiction.

(3) An amount sufficient to pay all other expenses and requirements of said school district, which amount shall be equivalent to not less than three, nor more than five, mills on the dollar of the total assessment of all property assessed and certified for taxation therein.

The total annual school tax levy for all purposes in any school district of the first class shall not be more than eleven and three-quarter (11¾) mills on the dollar of the total assessment of all property assessed and certified for taxation in the territory constituting the district.

§ 6-652.1. Taxing power of elected Board of Public Education of school districts of the first class A

(a) The elected Board of Public Education in any school district of the first class A shall have authority to impose taxes for the purposes of such school district as follows:

(1) Without ordinance and under the following statutes their reenactments and amendments, at the rates fixed therein, namely:

(i) Act of June 20, 1947 (P.L. 745, No. 320),[1] (Mercantile License Tax),

(ii) Act of June 20, 1947 (P.L. 733, No. 319),[2] (Personal Property Tax),

(iii) Act of August 24, 1961 (P.L. 1135, No. 508),[3] (Income Tax),

(iv) Real property tax acts:

Act of March 10, 1949 (P.L. 30, No. 14),[4] 11.75 mills,

Act of November 30, 1955 (P.L. 793, No. 226),[5] 1.5 mills,

Act of July 12, 1957 (P.L. 837, No. 386),[6] .75 mills,

Act of November 19, 1959 (P.L. 1552, No. 557),[7] 2 mills,

Act of October 21, 1965 (P.L. 650, No. 321),[8] 1 mill,

Act of November 26, 1968 (P.L. 1098, No. 340),[9] 6 mills,

Act of December 15, 1975 (P.L. 483, No. 143),[10] 6 mills.

(2) In addition to the taxing authority set forth in the act of August 24, 1961 (P.L. 1135, No. 508), (income tax), by ordinance, a tax of one per centum (1%) on wages, salaries, commissions and other earned income of individuals: Provided, however, That the total tax levied under the act of August 24, 1961 (P.L. 1135, No. 508) and the total tax levied under this

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1. 24 P.S. §§ 582.1 to 582.13 (§ 582.13 repealed).
2. 24 P.S. §§ 581.1 to 581.16a.
3. 24 P.S. §§ 588.1 to 588.12.
4. 24 P.S. §§ 1-101 et seq.
5. 24 P.S. §§ 583.1, et seq.
6. 24 P.S. §§ 585.5 et seq.
7. 24 P.S. §§ 585.10 et seq.
8. 24 P.S. §§ 585.9 et seq.
9. 24 P.S. §§ 585.14 et seq.
10. 24 P.S. §§ 586.1 et seq.

subsection on wages, salaries, commissions and other earned income of individuals may equal but shall not exceed two per centum (2%).

(3) In addition to the taxing authority set forth in the real property tax acts referred to in section 652.1(a)(1)(iv),[11] by ordinance a tax, sufficient to meet the school district's anticipated expenses on each dollar of the total assessment of all property assessed and certified for taxation in the territory constituting the district.

(4) In addition thereto, by ordinance on any persons, transactions, occupations, privileges, subjects and real or personal property as they shall determine not prohibited by section 2 of the act of December 31, 1965 (P.L. 1257, No. 511), known as "The Local Tax Enabling Act"[12] and not specifically excluded under paragraph (5) hereof; even if the ordinance imposing such tax or taxes is duplicative of the taxes enumerated in section 652.1(a)(1); but no ordinance shall authorize the imposition of a tax on the wages, salary or net income of any person not a resident of such school district.

(5) No tax of any kind may be imposed on admission to places of amusement, athletic events, motion picture theaters, occupations or occupational privilege, gross receipts of businesses, including institutions and nonprofit services, and parking, but this paragraph shall not apply to taxes imposed on the whole volume of business transacted by retail and wholesale dealers in goods, wares and merchandise.

(b) Any ordinance authorizing a tax, other than under a statute and at the rate fixed thereby, shall fix the rate thereof and provide for the levy, assessment and collection of the same.

§ 6-652.2. Appeals by taxpayers

(a) Within thirty (30) days after a tax has been levied for the first time by an elected Board of Public Education in any school district of the first class A, taxpayers representing twenty-five per centum (25%) or more of the total valuation

11. Subsec. (a)(1)(iv) of this section.

12. 53 PS. §§ 6902.

of real estate in the school district as assessed for taxation purposes or taxpayers of the school district not less than twenty-five (25) in number aggrieved by the ordinance or resolution shall have the right to appeal therefrom to the court of common pleas of the county upon giving bond with sufficient security in the amount of five hundred dollars ($500), approved by the court, to prosecute the appeal with effect and for the payment of costs. The petition shall set forth the objections to the tax and the facts in support of such objections and shall be accompanied by the affidavit of at least five (5) of the petitioners that the averments of the petition are true and the petition is not filed for the purpose of delay.

(b) No such appeal shall act as a supersedeas unless specifically allowed by the court to which the appeal is taken or a judge thereof.

(c) Immediately upon the filing of any such petition, the petitioners shall serve a copy of the petition and any rule granted by the court upon the president or secretary of the legislative body levying the tax.

(d) The court shall fix a day for a hearing not less than fifteen (15) days nor more than thirty (30) days after the filing of the petition. Notice of the time of such hearing shall be given to all interested parties as the court shall direct. The court shall promptly hear and dispose of the appeal.

(e) It shall be the duty of the court to declare the ordinance and the tax imposed thereby to be valid unless it concludes that the ordinance is unlawful; but the court shall not interfere with the reasonable discretion of the legislative body in selecting the subjects or fixing the rates of the tax. The court may declare invalid all or any portion of the ordinance or of the tax imposed or may reduce the rates of tax.

(f) Any party to the proceeding shall have the right to appeal from the decision of the court of common pleas to the Commonwealth Court as in other cases, but such appeal shall be taken within thirty (30) days from the time the decree of the court was entered and not thereafter. Any two (2) or more parties may join in such appeal.

§ 6-653. Tax levy for indebtedness of prior districts

Any school district of the first class assuming any bonded indebtedness of any former school district, sub-school district, or ward school district within its limits, may levy and collect a school tax, not to exceed eight and one half mills on the dollar of the total assessment of all property assessed and certified for taxation therein, until such assumed bonded indebtedness has been paid, after which such school tax levy shall not exceed the limitations fixed by the preceding section of this act.

§ 6-654. Tax rates to be expressed in dollars and cents

Whenever the board of public education of any school district of the first class shall, by resolution, fix the rate of taxation for any year at a mill rate, such resolution shall also include a statement expressing the rate of taxation in dollars and cents on each one hundred dollars of assessed valuation of taxable property.

§ 6-655. Property taxable

In all school districts of the first class or first class A, the school taxes shall be levied and assessed upon the same real estate and property as that upon which the municipal taxes on the municipality or municipalities comprising such school district of the first class or first class A are levied and assessed. All of such real estate and property is hereby made taxable for school purposes in each school district of the first class or first class A.

§ 6-655.1. Tax on owners of ground rents

The board of public education in school districts of the first class shall levy, on or before October 15, 1963, for the calendar year 1963, a tax on owners of ground rents. The tax levied under the provisions of this section for the calendar year 1963 shall be at the rate of one per centum (1%) on each dollar of the total assessment of the full principal value of all ground rents charged on real estate located within such school

district of the first class without regard to any statutory provision or to any provisions made in the ground rent deed with respect to the payment of taxes on the ground rent. The tax shall be collected in the same manner with like authority and subject to the same penalties as other real estate taxes for school purposes in school districts of the first class are collected.

The board of public education in school districts of the first class shall levy for the calendar years 1964 and 1965 a tax on owners of ground rents in the same manner with like authority and subject to the same penalties as other real estate taxes for school purposes in school districts of the first class are collected. The tax levied under the provisions of this section shall be at the rate of one per centum (1%) on each dollar of the total assessment of the full principal value of all ground rents charged on real property located within such school district of the first class without regard to any statutory provision or to any provision made in the ground rent deed with respect to the payment of taxes on the ground rent. The taxes authorized to be levied hereunder shall be in addition to any other taxes levied by such school district of the first class on the real property charged with such ground rent. All taxes, penalties and interest collected under the provisions of this section shall be used by the school district collecting the taxes to pay current expenses or other obligations of the school district.

§ 6-656. Certification of assessments

In order to enable the board of public education to levy the necessary school taxes for each school year, there shall be certified to the board, annually, before the first day of November of each year, by the board or bureau of assessors, board of revision of taxes, or other proper authorities in the municipality or municipalities comprising school districts of the first class or first class A, an estimated statement of the total assessment of all real estate and property taxable for municipal purposes in such municipality or municipalities comprising a school district of the first class or first class A, for the ensuing year. In school districts of the first class or first class A that

are coterminous with a municipality or municipalities, the taxes of which are levied and assessed on real estate and personal property as contained in the assessments made for county tax purposes, the proper county assessing authorities shall furnish to the board of public education, annually, on or before the first day of November, a properly certified duplicate of the then existing adjusted valuation of all property taxable for county purposes and for municipal purposes within the territorial limits of such municipality or municipalities comprising such school district of the first class or first class A, excepting only such assessments of intangible personal property as is not subject to the payment of school taxes.

§ 6-657. Certification of levy; collection

Upon any school taxes being levied by the board of public education in any school district of the first class, the amount of such levy shall forthwith be properly certified, under the seal of the district, attested by the president and secretary of the board, to the board or bureau of assessors, board of revision of taxes, or other proper authority, authorized to prepare tax duplicates, to be entered thereon, and by said authority properly certified to the receiver of taxes, city treasurer, or other proper authority collecting the municipal taxes in said district, which school taxes shall then be collected as provided by law, at the same time, in the same manner, and with like authority, and subject to the same discounts and penalties as other taxes collected in the municipalities.

§ 6-658. Bond of collector; neglect to furnish

(a) Every receiver of taxes, city treasurer, or other authority in a school district of the first class, who is by the provisions of this act authorized to collect or receive the school taxes therein, shall before entering upon the duties of his office as collector or receiver of school taxes, furnish to the school district a bond, in such amount and with such surety or sureties as the board of public education may approve, conditioned upon the faithful performance of his duty in the office of such collector or receiver. The cost of such bond shall be paid by the school district.

(b) In lieu of furnishing such a bond, each such receiver of taxes, city treasurer, or other authority, may file his[1] own collateral bond, in such amount as may be required by the board of public education, secured by an actual deposit with the board of public education, or with any bank or trust company within the Commonwealth which may be agreed upon, of any of the securities which depositories may use to secure the deposit of school funds as herein provided. The total market value of the securities, thus deposited, shall equal the amount of the collateral bond. Such collateral bond shall be conditioned upon the faithful performance of his duties as receiver or collector of taxes. The securities, thus deposited, shall constitute a trust fund to be available for the satisfaction of any liability accruing upon the collateral bond. The securities shall be accompanied by a proper assignment or power of attorney for their transfer. Such trust deposit, in the event of any depreciation in its value, shall be maintained, upon request in writing of the board of public education, at the amount provided herein. The board of public education may permit the receiver or collector of taxes to substitute for any one or more bonds or obligations included in any such securities, other bonds or obligations that meet the requirements of this act.[2]

(c) In case any receiver of taxes, or city treasurer elected as receiver of taxes or as school treasurer in a school district of the first class, shall refuse or neglect to furnish a proper bond with the proper sureties or securities, as herein provided, after his election, then, in that case, the board of public education may elect any other proper person as receiver of school taxes or school treasurer.

§ 6-659. Compensation: stationery; books; clerks

Every such treasurer or receiver of school taxes shall be paid such compensation as the board of public education in the district may determine, and, in addition to his salary, be furnished by the school district with the necessary stationery

1. Enrolled bill reads "its".
2. 24 P.S. § 1-101 et seq.

and books required by him in the performance of his duties as treasurer or receiver of school taxes. The board of public education may also appoint, annually, such clerks as it may deem necessary to assist the receiver of taxes.

§ 6-660. Monthly reports; payment of taxes collected

In every school district of the first class the receiver of taxes, city treasurer, or other proper authority collecting or receiving the school taxes as herein provided, shall, at the end of each month, report to the board of public education, and to the school controller, the total amount of school taxes collected during the month, setting forth the years for which collected. He shall pay the same when and as collected to the school treasurer, and shall file with the school controller a duplicate receipt therefor, and shall, at the end of each month, also report the total amount collected during the current fiscal year, and the unexonerated balance remaining uncollected on the tax duplicate for each year in such district.

§ 6-661. Annual reports

The receiver of taxes, city treasurer, or other proper authority collecting or receiving school taxes in any school district of the first class, shall, annually, on the first Monday of April of each year, settle his accounts for the school taxes for the preceding fiscal year, and shall, at the same time, furnish the board of public education with a statement of the total amount of school taxes standing unpaid upon the tax duplicates.

§ 6-662. Liens of unpaid taxes

In all school districts of the first class, all unpaid school taxes assessed upon any real property shall be liens thereon, in like way and manner, and subject to like provisions and restrictions, as exist and shall exist in the cases of all other taxes assessed in this Commonwealth. Such taxes and liens shall be filed, enforced, and collected by the receiver of taxes, treasurer, or other proper authority, in the manner and under and in accordance with the provisions which are and shall be applicable in the cases of other taxes assessed in this Commonwealth.

§ 6-663. Repealed. 1961, Aug. 24, P.L. 1135, No. 507, § 1

§ 6-664. Annual budget; advertising; public hearing

(a) The board of public education of each school district of the first class shall, annually, at or before the time of levying[1] the annual school taxes, prepare an approximate estimate of the amount of funds that will be required by the school district in its several departments for the following fiscal year. Such annual estimate shall be apportioned to the several classes of expenditures of the districts as the board of public education thereof may determine. The total amount of such estimate shall not exceed the amount of funds, including the proposed annual tax levy and State appropriation, available for school purposes in the district. The annual estimates shall be properly certified to the school controller of the district by the secretary of the board.

(b) The board of public education shall, at least fifteen days prior to the time final action is taken on any budget, publish, by advertisement at least once in two newspapers of general circulation printed in the municipality in which such school district is located, notice that such proposed budget has been prepared and is open to public inspection at the office of the board of public education. Such advertisement shall include a notice of public hearing on the proposed budget, scheduled for at least ten days before final action is taken upon any budget.

§ 6-665. Emergency appropriations

The board of public education in school districts of the first class may, during any fiscal year, make additional appropriations, or increase the existing appropriations, to meet emergencies such as epidemics, floods, fire or other catastrophies, and to increase the salaries of the employes of the board, the funds therefor to be provided from unexpended balances in existing appropriations, from unappropriated revenues, if any, or from temporary loans. Such additional appro-

1. Enrolled bill reads "leving".

priations, and such temporary loans, shall be authorized by the affirmative vote of two-thirds of all the members of the board.

The board of public education shall have the power to transfer any unencumbered balance, or any portion thereof, from one appropriation to another, or from one spending agency to another, by the affirmative vote of two-thirds of all the members of the board.

§ 6-666. Limit of Indebtedness

The total indebtedness incurred or created in any school district of the first class and first class A, including any indebtedness assumed by it on or before the eighteenth day of May, one thousand nine hundred eleven, shall not exceed fifteen (15) per centum upon the total assessed value of the taxable property in such school district.

§ 6-671. Fiscal year

In all school districts of the second, third and fourth class, the fiscal year shall begin on the first day of July in each year: Provided, That the board of school directors of any district of the second class may, by resolution adopted by two-thirds vote of the members thereof at a meeting of the board after not less than ten days' notice of the fact that such resolution would be presented for action at such meeting, fix the fiscal year of such school district so as to begin on the first day of January in each year instead of on the first day of July as hereinabove provided.

§ 6-672. Tax levy; limitations

(a) In all school districts of the second, third, and fourth class, all school taxes shall be levied and assessed by the board of school directors therein, during the month of February or March or April or May or June each year, for the ensuing fiscal year, except in districts of the second class where the fiscal year begins on the first day of January, in which the school taxes shall be levied and assessed during the month of October or November of each year. In such school districts the tax rate shall not exceed twenty-five mills on the dollar, on the total amount of the assessed valuation of all property taxable

for school purposes therein. Each school district of the second, third or fourth class may also collect a per capita tax on each resident or inhabitant of such district over eighteen years of age, as herein provided.

(b) Boards of school directors of districts of the second, third, and fourth classes are hereby authorized to levy annually, a tax on each dollar of the total assessment of all property assessed and certified for taxation therein, (1) to pay up to and including the salaries and increments of the teaching and supervisory staff, (2) to pay rentals due any municipality authority or nonprofit corporation or due the State Public School Building Authority, (3) to pay interest and principal on any indebtedness incurred pursuant to the act of July 12, 1972 (P.L. 781, No. 185), known as the "Local Government Unit Debt Act,"[1] or any prior or subsequent act governing the incurrence of indebtedness of the school district, which tax shall be unlimited, and (4) to pay for the amortization of a bond issue which provided a school building prior to the first Monday of July, 1959.

(c) The tax levied to pay salaries and increments of the teaching and supervisory staff shall not be invalidated by reason of the fact that in determining the amount to be raised by such tax for the payment of salaries and increments no deduction was made for appropriations or reimbursements paid or payable by the Commonwealth to the School District which are applicable directly or indirectly to the salaries and increments. None of said taxes shall be invalidated or affected by reason of the fact that it may increase the total annual school tax levy of any school district beyond the millage fixed or limited by this section.

(d) The boards of school directors of all independent school districts in which the board members are elected or appointed by court may, annually, levy a tax as herein authorized, at the same time and in the same manner as other school districts of the same class to which such independent district belongs, in an amount which shall be sufficient with all other taxes imposed by such district to pay the expenses of

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1. 53 P.S. § 6780-1 et seq.

such district as set forth in subsection (b) of this section and to pay all other expenses and requirements of such district: Provided, That such tax shall not be more than seventy-five (75) mills on the dollar on the total amount of the assessed valuation of all property taxable for school purposes within such district. Each such district may also collect, annually, a per capita tax in an amount of not less than one dollar ($1) and not more than ten dollars ($10) on each resident or inhabitant of such district over eighteen (18) years of age.

(e) The board of school directors of any school district of the third class with a coterminous boundary with a third class city may in any year levy separate and different rates of taxation for school purposes on all real estate classified as land, exclusive of the buildings thereon, and on all real estate classified as buildings on land. When real estate taxes are so levied, (1) the rates shall be determined annually by a vote of the board of school directors of a school district of the third class based upon passage of the school district's annual budget, (2) the rates may be levied by a school district of the third class: Provided, That (i) the revenue obtained in the first year of the levy is not in excess of one hundred fifteen (115) per centum of the aggregate revenue which the school district collected from a levy on real estate in the prior year, and (ii) in the second and subsequent years, the school district levy on real estate shall not be in excess of the aggregate revenue which a school district is empowered to collect under existing statute, and (3) the rates levied by a school district of the third class shall be uniform as to all real estate within the classification.

Amended 1993, June 7, P.L. 49, No. 16, § 2, effective July 1, 1993.

§ 6-672.1. School districts lying in more than one county or in more than one municipality; limitation on total tax revenues

(a) Whenever a school district shall lie in more than one county, the total taxes levied on real estate within the school district in each county shall be subject to:

(1) the limitation that the ratio which such total taxes bears to the most recent valuation of the same properties by

the State Tax Equalization Board shall be uniform in all of the counties, and the school district shall adjust its rate of taxation applicable to the portion of the district in each county to the extent necessary to achieve such uniformity; or

(2) as an alternative to the method provided in clause (1) or (3), whenever a school district shall lie in more than one county the board of assessment and revision of taxes in any of the counties or all of the counties in which the school district is located shall, at the request of the school directors of the district, furnish the market value of each parcel of property on the tax roll required to be furnished to the school directors under any assessment law of the Commonwealth. The market value of each parcel shall be (i) the quotient of the assessed value divided by the latest ratio of assessed value to market value in the municipality as determined by the State Tax Equalization Board, or (ii) at the option of the school district, the market value or each parcel shall be the quotient of the assessed value divided by the latest ratio of assessed value to market value as determined by the State Tax Equalization Board in the aggregate of all municipalities of the school district within the county, or (iii) at the option of the school district where there are two or more ratios of assessed value to market value, the school directors of that school district shall select the lowest of the ratios for a uniform assessed value to market value throughout the school district, or (iv) at the option or the school district where such school district is located in a home rule county, the school directors or that school district may use the county assessments. Under this clause, the school directors shall set a tax rate based upon a percentage not exceeding seventy-five (75) per centum of such market values which shall be uniform throughout the district; or

(3) as an alternative to the methods provided in clauses (1) and (2), whenever a school district shall lie in more than one county, the school directors of the district may set the millage at a uniform rate for the entire district if the counties are assessed at one hundred (100) per centum of the market

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1. 53 P.S. § 6780-1 et seq.

value and the counties are using the same base year for assessed value and market value.

(b) In the event a school district or part thereof located within one county is composed of two or more municipal governments at least one of which levies property taxes upon assessments made for county tax purposes and at least one of which utilizes separate assessments made for municipal tax purposes, the property tax levy for school district purposes shall be equalized by either of the methods prescribed in subsection (a)(1) or (2). If the former method is adopted, the ratio which the total taxes levied in each part of the school district bears to the most recent valuation or the same properties by the State Tax Equalization Board shall be uniform; if the latter method is adopted, the market value of each parcel of property on the tax roll shall be (i) in the case of the assessment made for county tax purposes, the quotient of the assessed value divided by the latest ratio of assessed value to market value for that portion of the school district as determined by the State Tax Equalization Board and, (ii) in the case of the separate assessment for municipal tax purposes, the quotient of the assessed value divided by the product of the latest ratio of assessed value to market value in the municipality as determined by the State Tax Equalization Board and the ratio of the total assessed valuation of the same properties for municipal tax purposes to the total assessed valuation of said properties for county tax purposes: Provided, however, That the taxpayers of no municipality or political subdivision within a school district shall pay an aggregate amount in school property taxes which, as a percentage of total school property taxes, shall exceed the ratio of its market value to the total market value of the school district as determined by the State Tax Equalization Board.

(c) Whenever a revision of assessment is completed in any portion of a school district and the revised assessments are to be used for school tax purposes the method prescribed in subsection (a)(2) above to equalize school property tax levies shall not be used until the latest ratio of assessed value to

market value as determined by the State Tax Equalization Board for that portion of the school district is based upon the revised assessments.

Amended 1998, Dec. 21, P.L. 1194, No. 154, § 4, effective in 60 days.

§ 6-672.2. School districts lying in more than one county; tax levy on occupations

(a) Any school district which lies in more than one (1) county and which levies an occupation tax, shall levy such tax uniformly upon each occupational category existing in all counties in which the district lies, at the lowest assessed valuation for each equivalent occupational category as certified to the school district by the counties in which the district lies.

(b) This section shall not apply to any school district which levies an occupational assessment tax on the effective date hereof unless the school district by resolution elected to be subject thereto.

§ 6-673. Tax rates to be expressed in dollars and cents

Whenever the board of school directors of any school district of the second, third, or fourth class shall, by resolution, fix the rate of taxation for any year at a mill rate, such resolution shall also include a statement expressing the rate of taxation in dollars and cents on each one hundred dollars of assessed valuation of taxable property.

§ 6-674. Property subject to tax; districts second class

In school districts of the second class, the school taxes shall be levied and assessed on the real estate and personal property therein, as contained in the assessment used for tax purposes in the city, borough, incorporated town or township in which the school district is located or as contained in the assessment made for county tax purposes.

§ 6-675. Certification of assessments, etc.; districts second class

In order to enable the board of school directors in districts of the second class to levy and assess the necessary

school taxes required by such school district each year, the city clerk or other proper official required by law so to do shall, annually, on or before the first day of April in each year, at the expense of the city, furnish to each school district of the second class for its use, to be retained by it, a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and a list of all residents or inhabitants made taxable in such school district of the second class, stating the name of each taxable, the valuation, and kind of property assessed. All of such real estate, personal property, and residents or inhabitants are hereby made taxable for school purposes in each such school district of the second class. The properly certified duplicate, herein required to be furnished each school district of the second class at the expense of the city, shall consist of a bound book printed and indexed according to the form to be submitted by the secretary of the board of school directors of each such school district to the city clerk or other proper official on or before the first day of January of each year: Provided, That in all cases where a school district of the second class is not located wholly within the boundary lines of a city, the county commissioners or other proper officials in the county shall, at the expense of the county, furnish to the school district a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and residents or inhabitants made taxable for county purposes in such school district.

§ 6-676. Property subject to tax; districts third and fourth class

In all school districts of the third class, excepting school districts of that class which are located wholly within the boundary lines of cities of the third class and where such third class school districts comprise the same territory as such city of the third class in which the same is so located, and in all school districts of the fourth class, the school taxes shall be levied and assessed upon all the property upon which the county taxes are levied and assessed.

In all school districts of the third class which are located wholly within the boundary lines of any city of the third class, and where such third class school district comprises the same

territory as such city of the third class in which the same is so located, the school taxes shall be levied and assessed on the real estate and personal property therein as contained in the assessment made for city tax purposes: Provided, That in any such school district of the third class which is situated within a county of the fourth to the eighth class, the board of school directors may, by resolution, accept the provisions of "The Fourth to Eighth Class County Assessment Law"[1] irrespective of whether or not the city has accepted the provisions of such assessment law, and in such case the school taxes shall be levied and assessed upon all the property upon which the county taxes are levied and assessed.

§ 6-677. Certification of assessments, etc; districts third and fourth class

(a) In order to enable the board of school directors in each district of the third class, other than school districts of that class which are located wholly within the boundary lines of cities of the third class, and where such third class school districts comprise the same territory as such city of the third class in which the same is so located, and in each district of the fourth class, to assess and levy the necessary school taxes required by such district each year, the county commissioners or other proper officials in each county shall, on or before the first day of April in each year, at the expense of the county, furnish to each school district of the third class, other than school districts of that class which are located wholly within the boundary lines of cities of the third class, and where such third class school districts comprise the same territory as such city of the third class in which the same is so located, and to each district of the fourth class therein, for its use, to be retained by it, a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and residents or inhabitants made taxable for county purposes in such school districts, stating the name of each taxable, and the valuation, description, and kind of property, and a list of the residents or inhabitants assessed. All of such real estate, per-

1. 72 P.S. § 5453.101 et seq.

sonal property, and residents or inhabitants are hereby made taxable for school purposes in each school district of the third and fourth class.

(b) In order to enable the board of school directors in all school districts of the third class which are located wholly within the boundary lines of any city of the third class, and where such third class school district comprises the same territory as such city of the third class in which the same is so located, to levy and assess the necessary school taxes required by such school district each year, the city clerk or other proper official shall, annually, on or before the first day of April in each year, at the expense of the city, furnish to each school district of the third class mentioned in this subsection, for its use, to be retained by it, a properly certified duplicate of the last adjusted valuation of all real estate, personal property, and a list of all residents or inhabitants made taxable in such school district of the third class mentioned in this subsection, stating the name of each taxable, the valuation, and kind of property assessed. All of such real estate, personal property, and residents or inhabitants are hereby made taxable for school purposes in each such school district of the third class. The properly certified duplicate, herein required to be furnished each of such school districts of the third class at the expense of the city, shall consist of a bound book or books printed and indexed according to the form to be submitted by the secretary of the board of school directors of each school district to the city clerk or other proper official on or before the first day of March of each year.

§ 6-677.1. Additions and revisions to duplicates

Whenever in second, third and fourth class school districts there is any construction of a building or buildings not otherwise exempt as a dwelling and such building is not included in the tax duplicate of the school district, the authority responsible for assessments in the city, borough, township or county shall, upon the request of the board of school directors, direct the assessor in the district to inspect and assess, subject to the right of appeal and adjustment provided by the act of Assembly under which assessments are made, all tax-

able property in the district to which major improvements have been made and to give notice of such change in the assessed valuation within ten days to the authority responsible for assessments, the school district and the property owner. Such property shall then be added to the duplicate, and shall be taxable for school purposes at the assessed valuation for that proportionate part of the fiscal year of the school district remaining after the property was improved. Any improvement made during the month shall be computed as having been made on the first of the next succeeding month. A certified copy of the additions or revisions to the duplicate shall be furnished monthly by the board of school directors to the tax collector for the district and within ten days thereafter the tax collector shall notify the owner of the property of the taxes due the school district.

§ 6-678. Duplicates to include certain territory

The tax duplicate to be certified by the county commissioners, the city clerk, or other proper official, to every school district of the second, third, or fourth class shall, in each proper district, include such territory as was attached to another district but by the provisions of the act, approved the eighteenth day of May, one thousand nine hundred eleven (Pamphlet Laws 309), became a part of the district in which it is situated on the first Monday of July, one thousand nine hundred eleven.

§ 6-679. Per capita taxes

Each resident or inhabitant, over eighteen years of age, in every school district of the second, third, and fourth class, which shall levy such tax, shall annually pay, for the use of the school district in which he or she is a resident or inhabitant, a per capita tax of not less than one dollar nor more than five dollars, as may be assessed by the local school district. The tax collector shall not proceed against a spouse or his employer until he has pursued remedies against the delinquent taxpayer and the taxpayer's employer under this section.

Each school district may exempt any person whose total income from all sources is less than five thousand dollars per

annum from its per capita tax or any portion thereof. The school district may adopt and employ regulations for the processing of claims for the exemption.

§ 6-680. List of residents for per capita tax purposes

(a) In order that the board of school directors of each school district of the second, third, or fourth class may assess, levy, and collect a per capita tax of not less than one dollar nor more than five dollars on each resident or inhabitant over eighteen years of age in the district, it shall be the duty of the proper assessors in each such school district to prepare a list of residents or inhabitants in such school district over eighteen years of age, and return the same with the other taxable property in the district, as provided by law. In each school district all such lists of residents or inhabitants shall be included and certified in the list of taxable property to be certified to the board of school directors in each such school district, as herein provided. Assessors whose assessment district includes the whole or parts of more than one school district shall return separate lists of residents and inhabitants of each such school district.

(b) Every resident or inhabitant in any school district, upon attaining eighteen years of age, and every person eighteen years of age or over becoming a resident or inhabitant in any school district, shall, within twelve months after the happening thereof, notify the proper assessors of his becoming of age or becoming a resident or inhabitant. Any person failing, within said period, to notify the assessors of the school district within which he resides, shall, in addition to the tax levied by such school district, be liable to such school district in a penal sum equal to such tax.

The board of school directors shall, at the same time as they give public notice of a proposed budget, include a notice of the requirements of this subsection, together with the name and address of the assessor to be notified.

§ 6-680.1. Temporary continuance of tax on landfill or resource recovery facilities

Notwithstanding the provisions of the act of July 28, 1988 (P.L. 556, No. 101), known as the "Municipal Waste Planning;

Recycling and Waste Reduction Act,"[1] any school district that initially imposed a tax on a municipal waste landfill or resource recovery facility on or before June 30, 1988, but after December 31, 1987, may continue to collect such tax at the rate in effect on July 1, 1988, during the 1988-1989 school year only.

§ 6-681. Certification of levy

In all school districts of the second, third, and fourth class, as soon as the school tax is assessed and levied by the board of school directors, the secretary shall compute and enter the same, stating the amount of school tax to be collected on the duplicate herein required to be furnished to the district. A certified copy of such duplicate shall be furnished by the board of school directors to the tax collector in each district. In any school district where the collector of school taxes is also the collector of county taxes the secretary of the board of school directors may compute and add the amount of the school taxes to the duplicate furnished by the county commissioners to such tax collector for county purposes. In all school districts of the second, third, or fourth class, all tax duplicates shall be furnished, as herein provided, to the tax collectors on or before the first day of July in each year.

§ 6-682. Tax duplicates and warrants

Each collector of school taxes in every school district of the second, third, or fourth class, shall, on or before the first day of July in each year, be furnished with his tax duplicate.

§ 6-683. Appointment of tax collector in certain cases

The board of school directors in each school district of the second, third, or fourth class, where a tax collector is not elected to collect school taxes, or where there is a vacancy, or where any tax collector elected refuses to qualify or furnish a bond as herein provided, shall, annually, on or before the first day of June in each year, appoint one or more suitable persons as tax collectors in said school districts. The board of school

1. 53 P.S. § 4000.101 et seq.

directors in any school district, appointing any tax collector or tax collectors, may authorize and direct any one tax collector to collect the school taxes in any one or more wards or other proper divisions in such school district.

§ 6-684. Bond of appointed collectors

(a) Every person appointed collector of school taxes in any school district of the second, third, or fourth class, before receiving his tax duplicate, shall furnish to the school district a proper bond, in an amount to be fixed by the board of school directors, with such surety or sureties as it may approve, conditioned upon the faithful performance of his duties as such tax collector.

(b) In lieu of furnishing such a bond, the tax collector may file his own collateral bond, in such amount as may be required by the board of school directors, secured by an actual deposit with the board of school directors, or with any bank or trust company within the Commonwealth which may be agreed upon, of any of the securities which depositories may use to secure the deposit of school funds as herein provided. The total market value of the securities, thus deposited, shall equal the amount of the collateral bond. Such collateral bond shall be conditioned upon the faithful performance of his duties as tax collector. The securities, thus deposited, shall constitute a trust fund to be available for the satisfaction of any liability accruing upon the collateral bond. The securities shall be accompanied by a proper assignment or power of attorney for their transfer. Such trust deposit, in the event of any depreciation in its value, shall be maintained, upon request in writing of the board of school directors, at the amount provided herein. The board of school directors may permit the tax collector to substitute for any one or more bonds or obligations included in any such securities other bonds or obligations, that meet the requirements of this act.

(c) In school districts of the second class, the board of school directors may in lieu of a surety bond accept a fidelity bond, conditioned upon the accounting for and payment over of all moneys received by him as taxes and the accounting for all tax items contained in his duplicate which remain uncol-

lected. The tax collector and his sureties shall be discharged from further liability on any bond as soon as all tax items contained in the duplicate are either: (1) collected and paid over or, (2) certified to the board of school directors for entry as liens in the office of the prothonotary, or (3) returned to the county commissioners for sale, or (4) the tax collector is exonerated from the collection thereof.

(d) In case any person appointed tax collector shall fail to furnish a proper bond, with the proper sureties or securities, within fifteen days after his appointment, or notice so to do, then, in any such case, the board of school directors shall appoint another suitable person as collector of the school taxes in said district in his place and stead, who, upon giving the proper bond, with the proper sureties or securities, shall be the duly authorized person to collect the school taxes in said district for the ensuing school year.

§ 6-685. Disqualification for reappointment, etc.

In all school districts of the second, third, and fourth class, no tax collector shall be reappointed, or be authorized to collect any school taxes in any school year, unless he shall have first settled his duplicate in full with the board of school directors for the preceding year, in the manner herein provided.

§ 6-686. Delinquent taxes; appointment of collector, etc.

(a) In all school districts of the second, third, and fourth class, all unpaid school taxes assessed and levied upon real property upon which there is no personal property out of which the same can be collected, shall be certified by the tax collector to the secretary of the board of school directors, together with a proper description of the property upon which the same is levied, on or before the first day of June in each year. All delinquent school taxes so certified to the board of school directors in any school district of the second, third, or fourth class, by any school tax collector, shall be collected by said board as provided by law.

(b) The board of school directors in such district may annually, an or before the first day of July in each year, appoint one or more suitable persons, as delinquent tax collec-

tors in said school district, to collect any and all school taxes from the collection of which the original tax collector has been exonerated, in accordance with the laws of this Commonwealth, and which taxes still remain unpaid upon any of the school tax duplicates, other than such unpaid school taxes as shall have been filed as liens in the office of the prothonotary, or have been returned to the county commissioners for sale. Such delinquent tax collector or collectors shall, upon the certification over to him or them of such taxes so remaining unpaid, proceed to collect the same from the persons respectively charged therewith, for which purpose he or they shall have all the authority and power now vested by law in any collector of school taxes for the collection of such taxes. The board of school directors issuing the original warrants shall issue an additional warrant to the collector or collectors of such delinquent taxes so appointed.

(c) Collectors of delinquent school taxes so appointed shall give bond in the same manner as required of the original tax collector, and shall be paid such commissions or compensation as is paid the regular collector. Such commissions or compensation shall be paid by proper orders drawn on the school treasurer as other accounts are paid by the school district. Every such collector of delinquent school taxes shall be responsible and account to the board of school directors for all such taxes collected by him in like manner and in accordance with existing laws pertaining to school tax collections.

§ 6-687. Annual budget; additional or increased appropriations; transfer of funds

(a) The board of school directors of each school district of the second, third, or fourth class shall, annually, at least thirty (30) days prior to the adoption of the annual budget, prepare a proposed budget of the amount of funds that will be required by the school district in its several departments for the following fiscal year. Such proposed budget shall be prepared on a uniform form, prepared and furnished by the Department of Public Instruction, and shall be apportioned to the several classes of expenditures of the district as the board of school directors thereof may determine. Final action shall

not be taken on any proposed budget, in which the estimated expenditures exceed two thousand dollars ($2000), until after ten (10) days' public notice. Nothing in this act shall be construed to prevent any school district, whose total estimated expenditures do not exceed two thousand dollars ($2000), from holding a public hearing. The proposed budget shall be printed, or otherwise made available for public inspection to all persons who may interest themselves, at least twenty (20) days prior to the date set for the adoption of the budget.

(b) The board of school directors, after making such revisions and changes therein as appear advisable, shall adopt the budget and the necessary appropriation measures required to put it into effect. The total amount of such budget shall not exceed the amount of funds, including the proposed annual tax levy and State appropriation, available for school purposes in that district. Within fifteen (15) days after the adoption of the budget, the board of school directors shall file a copy of the same in the office of the Department of Public Instruction.

(c) The board of school directors may, during any fiscal year, make additional appropriations or increase existing appropriations to meet emergencies, such as epidemics, floods, fires, or other catastrophies, or to provide for the payment for rental under leases or contracts to lease from the State Public School Building Authority or any municipality authority entered into subsequent to the date of the adoption of the budget. The funds therefor shall be provided from unexpended balances in existing appropriations, from unappropriated revenue, if any, or from temporary loans. Such temporary loans, when made, shall be approved by a two-thirds vote of the board of school directors.

(d) The board of school directors shall have power to authorize the transfer of any unencumbered balance, or any portion thereof, from one class of expenditure or item, to another, but such action shall be taken only during the last nine (9) months of the fiscal year.

(e) For the fiscal year 1980-1981, a school district may, by a majority vote of the board of school directors, reopen its budget for the purpose of reallocating any surplus funds in the

district budget for the retirement of any outstanding indebtedness of the district or for the reduction of property taxes for the fiscal year 1980-1981.

(f) For the fiscal year 1980-1981, a school district may, by a majority vote of the board of school directors, reopen its budget for the purpose of reallocating any surplus funds in the district budget for the retirement of any outstanding indebtedness of the district or for the reduction of property taxes for the fiscal year 1980-1981.

(g) (1) Notwithstanding any other provisions of this act, the board of school directors of each school district is required to, and shall, reopen its 1991-1992 budget during the month of August 1991 for the purposes of adjusting their budgets to reflect the following increased State allocations for fiscal year 1991-1992 provided by the General Assembly through the act of August 4, 1991 (P.L. 484, No. 7A), known as the "General Appropriation Act of 1991": subsidy payments on account of instruction; small district assistance payment; payments on account of transportation of nonpublic school pupils; and State reimbursement for health services.

(2) In those districts which levy taxes and where the increased State allocations exceed the State revenue figures utilized by the school district at the time of adoption of its original fiscal year 1991-1992 budget, the district shall use these increases in State allocations to abate local property tax or nuisance taxes, or both, which were levied at the time of original budget adoption within sixty (60) days of the reopening of the district's budget. Districts may implement such tax abatements in the form of tax credits against 1992-1993 tax bills or may use such increases in State allocations to reduce or retire outstanding school district indebtedness.

(3) Those districts which levy taxes and in which the increased State allocations, when compared to State revenue figures utilized in their originally adopted budget, exceed the budgeted figures by an amount insufficient to cost-effectively prepare and mail adjusted tax notices shall apply to the Department of Education for a waiver of this tax rebate provision.

(4) Districts that obtain waivers from the Department of Education shall use all the increased State allocations to meet fiscal year 1991-1992 program needs. Districts that do not obtain waivers from the Department of Education shall use all the increased State allocations to abate local tax levies. Districts that implement such tax abatement in the form of a credit against 1992-1993 tax bills may hold the increased State allocations in a reserve account or fund balance during the 1991-1992 fiscal year. Under no other circumstances shall any of these increased State allocations be used to increase a district's existing fund balance or for deposit into any district reserve accounts.

(5) At such time as school districts mail out adjusted tax notices resulting from 1991-1992 budget reopening actions, such notice shall include the following statement:

> "These decreased school district tax assessments result from additional revenues allocated to the district as a result of passage of the "General Appropriation Act of 1991 by the Pennsylvania General Assembly."

(6) The Department of Education shall establish the administrative procedures necessary to implement and to audit school district compliance with the provisions of this section and shall report its findings to the Education Committee of the Senate and the Education Committee of the House of Representatives.

(h) Beginning with the adjusted final fiscal year 1991-1992 budget, and each fiscal year thereafter, on or before September 15, each school district shall furnish to the Education Committee of the Senate and the Education Committee of the House of Representatives a copy of the school district's final adopted annual budget to include the amount of district revenues being held in excess of its total budgeted expenditures. Such documentation shall include an explanation of the district's need to maintain the revenues in this fund balance.

Amended 1992, June 30, P.L. 392, No. 85, § 1, imd. effective.

§ 6-690. Creation of capital reserve fund for approved school building project programs

Any school district shall have the power to create a special fund, which may be designated as a Capital Reserve Fund, and to accumulate therein moneys to be expended, in accordance with the provisions of this act, during a period not to exceed five years from the date when the first payment was made into the fund, for the purpose of constructing a school building project or projects under a long-term project program approved by the Department of Public Instruction. The proposed project program may include the cost of acquiring suitable sites for school buildings, the cost of constructing new school buildings, or the cost of providing needed additions or alterations to existing buildings. The Department of Public Instruction may approve any project programs if it shall find in the case of all school districts, except school districts of the first class, first class A and second class which are not part of a county-wide plan, that each component of the proposed project program is in conformity to plans for the orderly development of improved attendance areas and administrative units and for the improved housing of public schools in the Commonwealth and in the case of all school districts, that the building or buildings will conform to standards prescribed by the State Board of Education with respect to educational and architectural design, building materials, fixtures and equipment, location, usefulness for community activities, safety, comfort and convenience and that the school district will have the ability to meet from current revenues the rental or sinking fund charge which may be necessary to amortize that portion of the cost of the proposed project or projects which is not covered by anticipated accumulation of money in the district's capital reserve fund. Moneys accumulated in the district's capital reserve fund may be paid as a lump sum at the time that construction of the project or projects is begun or payment of such accumulated sums may be spread over a period of years as a part of the annual rental or sinking fund charge approved by the Department of Public Instruction for the proposed project or projects.

The capital reserve fund herein provided for shall consist of receipts from a special tax which each board of school directors or board of education is hereby authorized to levy in accordance with the provisions of this act. Such tax levy may not exceed three mills in any one year; nor may the tax be levied, on account of any one project program, for a period of more than five years. Furthermore, such tax may be levied only for the purpose of financing a school building project or projects which have been approved by the Department of Public Instruction for construction within five years from the date of the approval given by that department. Upon the total and final completion of a project program which for the purpose herein contemplated, may include the construction, reconstruction, or renovation of more than one building, the board of school directors may proceed to set up a new project program for later construction and may establish a new capital reserve fund to finance such project program.

If for any reason the project program for which the capital reserve fund was established fails to materialize, the moneys accumulated in the fund shall be reverted to the district's general fund in equal amounts spread over a period of five years.

§ 6-691. Investment of fund; budget; record

The moneys in the capital reserve fund shall be kept separate and apart from any other fund by the treasurer of the school district, and the moneys in the fund may be invested by the board of directors or by the board of education in securities legal for the investment of sinking fund moneys of school districts. The interest earnings on investments shall be paid into the capital reserve fund. The board of directors or the board of education may sell any such securities and reinvest the moneys in other securities or convert such securities into cash when the same may be needed for expenditure under the provisions of this act or for reverting to the general fund if the approved project or projects fail to materialize within the five year period. The school district shall annually show in its budget and in its annual financial report, the amount of moneys in the capital reserve fund which shall at all times be properly

identified as to purpose and authority under which it is constituted. 1949, March 30, P.L. 30, art. VI, § 691, added 1959, Nov. 30, P.L. 1597, § 1.

Another section of the same number, added by Act 1959, Dec. 15, P.L. 1842, § 2, relates to distressed school districts. See section 6-691 post.

§ 6-692. Expenditure of fund

The moneys in any such capital reserve fund may be expended by the school district singly or jointly (1) with the Commonwealth or any department or agency thereof; (2) with the Federal government or any department or agency thereof, or (3) with one or more other school districts only during the period of time for which the fund was created, and only for capital improvements approved by the Department of Public Instruction and for no other purpose.

1949, March 10, P.L. 30, art. VI, § 692, added 1959, Nov. 30, P.L. 1597, § 1.

Another section of the same number, added by Act 1959, Dec. 15, P.L. 1842, § 2, relates to the creation of special boards of control for distressed school districts. See section 6-692 post.

§ 6-691. When district distressed

(a) A school district shall be deemed to be distressed when any one of the following circumstances shall arise and the Secretary of Education, after proper investigation of the district's financial condition, the administrative practices of the board and such other matters deemed appropriate by the Secretary of Education, has issued a certificate declaring such district in financial distress:

(1) The salaries of any teachers or other employes have remained unpaid for a period of ninety (90) days.

(2) The tuition due another school district remains unpaid on and after January first of the year following the school year it was due and there is no dispute regarding the validity or amount of the claim.

(3) Any amount due any joint board of school directors under a joint board agreement remains unpaid for a period of ninety (90) calendar days beyond the due date specified in the joint board's articles of agreement.

(4) The school district has defaulted in payment of its bonds or interest on such bonds or in payment of rentals due any authority for a period of ninety (90) calendar days and no action has been initiated within that period of time to make payment.

(5) The school district has contracted any loan not authorized by law.

(6) The school district has accumulated and has operated with a deficit equal to two per centum (2%) or more of the assessed valuation of the taxable real estate within the district for two successive years.

(7) A new, merged or union school district has been formed and one or more of the former school districts which compose the merged or union school district was a distressed school district at the time of the formation of the merged or union school district.

(b) No school district shall be deemed to be distressed by reason of any or the above circumstances arising as a result of the failure of the Commonwealth to make any payment of money due the district at the time such payment is due.

(c) In addition to the circumstances to determine financial distress under subsection (a), the Secretary of Education may declare a school district of the first class to be distressed if the Secretary of Education determines that:

(1) the school district of the first class failed to adopt or to comply with a valid budget to operate the school district for a minimum instructional school year under section 1501;[1]

(2) the school district of the first class failed to allocate or transfer revenues to ensure that funds are sufficient to provide a minimum instructional school year under section 1501;

(3) the city of the first class failed to transfer revenues to the school district consistent with the current budget; or

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1. 24 PS. § 15-1501.

(4) the school district of the first class has failed or will fail to provide for an educational program in compliance with the provisions of this act, regulations of the State Board of Education or standards of the Secretary of Education.

Amended 1998, April 27, P.L. 270, No. 46, § 2, imd. effective.

Another section of the same number, added by Act 1959, Nov. 30, P.L. 1597, § 1, relates to the investment of the capital reserve fund. See section 6-691 ante.

§ 6-692. Special board of control; petition; appointments

Whenever on the basis of a proper investigation as herein provided for, the Superintendent of Public Instruction has declared any school district to be a distressed school district he or his designated representative who shall be a person trained in public school administration, possessing the certification prerequisites demanded of a district or assistant superintendent, or holding in the Department of Public Instruction the rank of Deputy Superintendent, shall petition the court of common pleas of the county in which such district, or the largest part in area, is located to appoint two citizens who shall be qualified electors and taxpayers in the county in which the school district is located. School directors and employes of any such school district shall be ineligible for appointment by the court. The appointees, together with the Superintendent of Public Instruction or his designated representative, shall constitute a special board of control. Vacancies occurring because of death or resignation of appointed members of the board shall be filled by the court. The special board of control shall assume control of the affairs of the district and operate it in the place of the school directors during the period necessary to reestablish a sound financial structure in the district. The costs of the court proceedings shall be paid by the Department of Public Instruction.

§ 6-692.1. When no appointment is made

In the event that the court of common pleas has made no appointment of members to a special board of control within thirty (30) days of the date of the filing of the petition for such

appointment, the Superintendent of Public Instruction may designate the executive director of the intermediate unit and a member of the intermediate unit board of directors of the intermediate unit in which the petition is presented to serve until the court makes its appointments. A school director of the distressed school district serving on the intermediate board of directors shall be ineligible for appointment.

§ 6-692.2. Compensation of special board of control

The members of the special board appointed by the court, or the member other than the executive director of the intermediate unit appointed on a temporary basis by the Superintendent of Public Instruction, shall be paid seventy-five dollars ($75) for each meeting of the regular board of school directors of the distressed school district which they attend: Provided, however, That the total amount to be paid in any fiscal year to each such member shall not exceed nine hundred dollars ($900). Such payments shall be made from the funds of the school district and shall be charged to administrative services even though no previous provision has been made in the budget of the school district for such expenses.
Amended 1995, June 30, P.L. 220, No. 26, § 2, imd. effective.

§ 6-693. Powers of special board of control

When the special board of control assumes control of a distressed school district, it shall have power and is hereby authorized to exercise all the rights, powers, privileges, prerogatives and duties imposed or conferred by law on the board of school directors of the distressed district, and the board of school directors shall have no power to act without the approval of the special board of control. In addition thereto, the special board of control shall have power to require the board of directors within sixty (60) days to revise the district's budget for the purpose of effecting such economies as it deems necessary to improve the district's financial condition. To this end the special board of control may require the board:

(1) To cancel or to renegotiate any contract other than teachers' contracts to which the board or the school district is

a party, if such cancellation or renegotiation of contract will effect needed economies in the operation of the district's schools.

(2) To increase tax levies in such amounts and at such times as is permitted by the act to which this is an amendment.

(3) To appoint a special collector of delinquent taxes for the district who need not be a resident of the school district. Such special tax collector shall exercise all the rights and perform all the duties imposed by law on tax collectors for school districts. The superseded tax collector shall not be entitled to any commissions on the taxes collected by the special collector of delinquent taxes.

(4) To direct the special school auditors of the department or to appoint a competent independent public accountant to audit the accounts of the distressed school districts.

(5) To dispense with the services of such nonprofessional employees as in his judgment are not actually needed for the economical operation of the school system.

(6) To suspend, in accordance with the provisions of section 1124[1] of the act to which this is an amendment, such number of professional and temporary professional employees as may be necessary to maintain a pupil-teacher ratio of not less than twenty-six pupils per teacher for the combined elementary and secondary school enrollments.

§ 6-694. Additional tax

When the operation of a distressed school district has been assumed by the special board of control, the board of school directors of the district shall, upon the recommendation and with the approval of the special board of control, levy an additional tax or taxes sufficient to liquidate the indebtness of the district: Provided, That when such school directors fail to levy such additional taxes within a reasonable time, the special board of control may petition the court of common pleas of the county in which such district or the largest part in area is located to issue a writ of mandamus requiring the board to levy such additional tax or taxes, or he may, in his own name,

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1. 24 P.S. § 11-1124.

initiate action to have the board removed from office for neglect of duty subject to the provisions of section 318[1] of this act. Notwithstanding present limitations on tax rates imposed by law, such limitations shall not apply to distressed school districts.

§ 6-695. School directors to remain in office; elections

The school directors of a distressed district may not resign their offices, except with the unanimous consent control of the special board of control and shall continue in office, unless removed from office for neglect of duty under the provisions of section 318 of this act[1] by the court of common pleas of the county in which such district or the largest part in area is located, or unless any of such directors are elected to another position not compatible with the position of school director or are appointed to any position for which there is a requirement that said appointee shall hold no elective office, for the remainder of their terms during the time the district is operated by the special board of control and shall perform any duties delegated to them by it. The assumption of control of a distressed school district by the special board of control shall in no way interfere with the regular election or reelection of school xdirectors for the district.

1. 24 P.S. § 3-318.

1. 24 P.S. § 3-318.

§ 25-2502. Payments on account of instruction

(a) Every school district and every vocational school district shall be paid by the Commonwealth on account of the instruction of pupils an amount to be determined by multiplying the numbers of elementary, secondary, joint elementary, joint secondary, State-owned college laboratory school, or area technical school teaching units, each based on the number of all pupils, except kindergarten pupils, who are residents of the district and are in average daily membership in the district's public schools, joint elementary schools, joint high schools, laboratory schools of State-owned colleges, or area technical schools respectively, and in the case of kindergarten pupils based on the number of kindergarten teachers employed: Provided, That for the school year 1962-1963, and for each school year thereafter, the number of equivalent full time kindergarten teachers in a laboratory school of a State-owned college shall be prorated among all the districts having children enrolled in the laboratory school kindergarten on the basis of the total number of kindergarten pupils who are legal residents of such districts and who are in average daily membership in the laboratory school kindergarten, and for the school year 1957-1958 and for each school year thereafter, the numbers of elementary or secondary teaching units, each based on the number of all pupils who are residents of the district and who are in average daily membership in the elementary schools or secondary schools of other school districts within the Commonwealth, by the district's basic account standard reimbursement fraction; and for the school year 1955-1956 by four thousand nine hundred dollars ($4900); for the school year 1956-1957 by five thousand three hundred dollars ($5300); for the school year 1957-1958 and for each school year thereafter by the lesser of actual instruction expense per elementary, secondary, joint elementary, joint secondary, laboratory school elementary, laboratory school secondary, area technical school, elementary educated in the public schools of other districts within the Commonwealth, secondary educated in the public schools of other districts within the Commonwealth teaching unit, each as the case may be, or five thousand eight hundred dollars ($5800); for the school year 1962-1963

by the lesser of actual instruction expense per elementary, secondary, joint elementary, joint secondary, laboratory school elementary, laboratory school secondary, area technical school, elementary educated in the public schools of other districts within the Commonwealth, secondary educated in the public schools of other districts within the Commonwealth teaching unit, each as the case may be, or six thousand five hundred dollars ($6500); and for the school year 1963-1964 and for each school year thereafter by the lesser of actual instruction expense per elementary, secondary, joint elementary, joint secondary, laboratory school elementary, laboratory school secondary, area technical school, elementary educated in the public schools of other districts within the Commonwealth, secondary educated in the public schools of other districts within the Commonwealth teaching unit, each as the case may be, or six thousand eight hundred dollars ($6800). For the school year 1953-1954 and each school year thereafter, teaching units shall be based on the number of all pupils, except kindergarten pupils, who are residents of the school district in average daily membership in the district's public schools in State-owned college laboratory schools and in elementary schools and high schools operated by joint boards of which the district of residence is a member, and in area technical schools in which the district of residence participates. In the case of kindergarten pupils, teaching units shall be one for each kindergarten teacher employed by the district: Provided, That for the school year 1957-1958 and for each school year thereafter, additional teaching units shall be based on the numbers of all pupils who are residents of the district and are in average daily membership in the elementary schools of other districts in the Commonwealth or who are in average daily membership in the secondary schools of other districts within the Commonwealth: Further provided, That in the case of such pupils teaching units shall be calculated on the basis of thirty-five (35) elementary pupils and twenty-six (26) secondary pupils per teaching unit, respectively.

(b) Notwithstanding the foregoing provisions of this section, when because of sparsity of population, road or climatic conditions, or lack of other available high school facilities, the

Department of Public Instruction has approved the continued operation of a small high school, the district shall receive an amount based on a number of teaching units equal to the number of teachers approved by the department as being required to provide a satisfactory educational program in such school, provided, that the number of teachers employed is not less than the number approved.

(c) For no year shall any school district or vocational school district receive less than the minimum subsidy per teaching unit, nor shall any school district of the first class A, during the school year 1953-1954 for the school year 1952-1953, or during the school year 1954-1955 for the school year 1953-1954, or during the school year 1955-1956 for the school year 1954-1955, receive less per teaching unit than the amount received by any district of the first class.

(d) For the school year 1976 and 1977 through the 1980-1981 school year, each school district shall be paid by the Commonwealth on account of instruction of the district's pupils an amount to be determined by multiplying the market value/income aid ratio times the actual instruction expense per weighted average daily membership or by the base earned for reimbursement, whichever is less, and by the weighted average daily membership for the district. For the school year 1976-1977 any school district which, as a result of the impact on payments under subsections (d), (e) and (f) and under section 2592[1] by reason of the market value/income aid ratio or the application of equalized millage to the base earned for reimbursement, shall suffer a reduction in subsidy entitlement, shall be held harmless from this impact and shall receive an amount which is no less than that received for 1976-1977 under such subsections and under section 2592. For the 1982-1983 school year through the 1990-1991 school year, each school district shall be paid by the Commonwealth on account of instruction of the district's pupils an amount to be determined by multiplying the district's market value/income aid ratio by the factor for educational expense and by the weighted average daily membership of the district. For the

1. 24 P.S. § 25-2592(d) to (f).

1983-1984 school year, each school district participating, during the 1984-1995 school year, in a Statewide program for testing and remediation which is designed to identify and provide remediation services to individual students pursuant to section 1511.1,[2] shall be paid by the Commonwealth on account of instruction of the district's pupils an amount to be determined by multiplying the district's market value/income aid ratio by the factor for educational expense, one thousand seven hundred twenty-five dollars ($1,725), and by the weighted average daily membership of the district. This subsidy may be used for strengthening curriculum, increasing standards, improving student achievement and providing remedial programs during the 1984-1985 school year.

(e) For no school year from 1966-1967 through 1990-1991 shall any district receive less than an amount obtained by multiplying the minimum subsidy by the weighted average daily membership for the district.

(f), (f.1), (g) Repealed. 1983, July 22, P.L. 104, No. 31, § 9, imd. effective.

(h) Students enrolled in a private residential rehabilitative institution as defined in section 914.1-A[3] or a day treatment program of such an institution or a day treatment program approved by the Department of Public Welfare as provided for in section 1310(b)[4] or a State-owned school other than a postsecondary school shall be considered in the weighted average daily membership of the school district of residence for the purpose of making payments under this section.

Amended 1993, June 7, P.L. 49, No. 16, § 14, effective July 1, 1993.

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2. 24 P.S. § 15-1511.1.
3. 24 P.S. § 9-964.1.
4. 24 P.S. § 13-1310(b).

§ 25-2502.1 Repealed. 1963, Aug. 14, P.L. 1065, No. 463, § 11; 1966, Feb. 1, P.L. (1965) 1642, § 16, effective June 30, 1968

§ 25-2502.2. Payments on account of migratory children

Every school district regardless of classification shall be paid by the Commonwealth for the school term 1958-1959 and for every school term thereafter in addition to other reimbursement by the Commonwealth, the sum of one dollar ($1) per day not exceeding forty days during any school term for each migratory child attending any of its public schools. "Migratory child" is defined as any child domiciled temporarily in any school district for the purpose of seasonal agricultural employment but not acquiring residence therein, and any child accompanying his parents or guardian who is so domiciled.

§ 25-2502.3, 25-2502.4. Repealed. 1983, July 22, P.L. 104, No. 31, § 9, imd. effective

§ 25-2502.5. Limitation of certain payments

(a) Notwithstanding any other provision of law, for the school year 1970-1971 through the school year 1980-1981, no school district shall be paid under subsections (d) and (e) of section 2502[1] or section 2592,[2] whichever is applicable, and subsection (f) of section 2502, and section 2502.3[3] and section 2502.4[4] of this act an amount in excess of one hundred percent (100%) of the total approved reimbursable instructional expenditures of such school district. The provisions of this subsection shall not apply to any school district receiving any payment under subsection (g) of section 2502 of this act.

(b) Notwithstanding any other provisions of law, for the school year 1982-1983 and 1983-1984, no school district shall

1. 24 P.S. § 25-2502(d) and (e).
2. 24 P.S. § 25-2592 (repealed).
3. 24 P.S. § 25-2502.3 (repealed).
4. 24 P.S. § 25-2502.4 (repealed).

be paid under subsections (d) and (e) of section 2502[5] and section 2502.11[6] or, for the school year 1984-1985, no school district shall be paid under subsections (d) and (e) of section 2502, subsection (e) of this section, section 2502.11 and section 2502.13[7] or, for the school year 1985-1986, no school district shall be paid under subsections (d) and (e) of section 2502, subsection (e) of this section, section 2502.11, section 2502.13, section 2502.14[8] and section 2502.15[9] or, for the school year 1986-1987, no school district shall be paid under subsections (d) and (e) of section 2502, subsection (e) of this section, section 2502.11, section 2502.13 and section 2502.15 or, for the school year 1987-1988, no school district shall be paid under subsections (d) and (e) of section 2502, subsection (e) of this section, sections 2502.11 and 2502.13 or, for the school years 1988-1989 through 1990-1991, no school district shall be paid under subsections (d) and (e) of section 2502, sections 2502.11 and 2502.13 an amount in excess of one hundred percent (100%) of the total reimbursable instructional expenditures of the school district. For the 1982-1983 school year, all school districts qualifying for payments under subsections (d) and (e) of section 2502 and section 2502.11 shall be limited to an increase payment on account of those sections which shall not exceed nine percent (9%) over the sums received on account of section 2502.9[10] for the 1981-1982 school year, nor shall any school district receive an increase or less than two percent (2%) of the 1982-1983 school year payments on account of the 1981-1982 school year. For the 1984-1985 school year, each school district qualifying for payments under subsections (d) and (e) of section 2502 and section 2502.11 shall be limited to an increase payment on account of those sections which shall not exceed eight and forty-five one hundredths percent (8.45%) over the sums received on account of such sections for the school year 1983-1984, nor shall any school district receive

5. 24 P.S. § 25-2502(d),(c).
6. 24 P.S. § 25-2502.11.
7. 24 P.S. § 25-2502.13.
8. 24 P.S. § 25-2502.14.
9. 24 P.S. § 25-2502.15.
10. 24 P.S. § 2502.9.

an increase of less than two percent (2%) of such payments for the school year 1983-1984: Provided, however, That such payments for the school year 1983-1984 shall be computed using a Factor for Educational Expense of one thousand six hundred fifty-six dollars ($1,656) and a maximum payment increase of seven and forty-five one hundredths percent (7.45%) and a minimum payment increase of two percent (2%) and the eighty percent (80%) guarantee provided for in section 2502.5(e).[11] For the 1985-1986 school year, each school district qualifying for payments under subsections (d) and (e) of section 2502, subsection (e) of this section and section 2502.11 shall be limited to an increase payment on account of those sections which shall not exceed seven percent (7%) over the sums received on account of such sections for the school year 1984-1985, nor shall any school district receive an increase less than two percent (2%) of such payments for the school year 1984-1985. For the 1986-1987 school year, each school district qualifying for payments under subsections (d) and (e) of section 2502, subsection (e) of this section and section 2502.11 shall be limited to an increase payment on account of those sections which shall not exceed eight percent (8%) over the sums received on account of such sections and section 2502.14 for the school year 1985-1986, nor shall any school district receive an increase less than two percent (2%) of such payment for the school year 1985-1986. For the 1987-1988 school year, each school district qualifying for payments under subsections (d) and (e) of section 2502, subsection (e) of this section and section 2502.11 shall be limited to an increase payment on account of those sections which shall not exceed eight percent (8%) over the sums received on account of such sections and section 2502.15 for the school year 1986-1987, nor shall any school district receive an increase less than two percent (2%) of such payments for the school year 1986-1987. For the 1988-1989 school year through the 1990-1991 school year, no school district qualifying for payments under subsections (d) and (e) of section 2502, subsection (e) of this section and

11. 24 P.S. § 25-2502.5(e).

section 2502.11 shall receive an increase less than two percent (2%) of such payments for the prior school year.

(c), (d) Deleted by amendment. 1985, July 1, P.L. 103, No. 31, § 5, imd. effective.

(e) For the school years 1983-1984 and 1984-1985, no school district shall be paid under subsections (d) and (e) of section 2502, subsection (e) of this section, and under section 2502.11 less than eighty percent (80%) of the total amount to which it is entitled under said sections, notwithstanding any limitations on increases in such payments enacted by the General Assembly to the contrary. For the school year 1985-1986, no school district shall be paid under subsections (d) and (e) of section 2502 and under section 2502.11 less than eighty-five percent (85%) of the total amount to which it is entitled under said sections, notwithstanding any limitations on increases in such payments enacted by the General Assembly to the contrary. For the school year 1986-1987, no school district shall be paid under subsections (d) and (e) of section 2502 and under section 2502.11 less than ninety percent (90%) of the total amount to which it is entitled under said sections, notwithstanding any limitations on increases in such payments enacted by the General Assembly to the contrary. For the school year 1987-1988, no school district shall be paid under subsections (d) and (e) of section 2502 and under section 2502.11 less than ninety-five percent (95%) of the total amount to which it is entitled under said sections, notwithstanding any limitations on increases in such payments enacted by the General Assembly to the contrary. For the school year 1983-1984, payments under this subsection shall be computed using a Factor for Educational Expense of one thousand six hundred fifty-six dollars ($1,656) and a maximum payment increase of seven and forty-five one hundredths percent (7.45%) and a minimum payment increase of two percent (2%). For the school year 1984-1985 and each school year thereafter, payments under this subsection shall be computed using the Factor for Educational Expense as defined in section 2501(19) and minimum and maximum increase limits provided for in subsection (b) of this section. No school district shall, as a result of this subsection, be paid an amount in excess of one

hundred percent (100%) of the total reimbursable instructional expenditures of the school district. Amended 1993, June 7, P.L. 49, No. 16, § 15, effective July 1, 1993.

§ 25-2502.6. Proportionate reduction of payments

(a) If the sums appropriated for the 1978-1979 school year through the 1981-82 school year are not sufficient to pay in full the total amounts to which all qualified school districts, intermediate units and nonpublic schools are entitled to receive under the provisions of sections 917.1-A, 919.1-A, 922.1-A, 923-A(d), 2501, 2502, 2502.3, 2502.4, and 2502.8[1] for such year, the allocations to the school districts, intermediate units and nonpublic schools shall be proportionately reduced to the extent necessary to bring the aggregate of the school district, intermediate unit and nonpublic school allocations within the limits of the amounts appropriated. However, no school district's gross allocation under the provisions of the sections referred to herein shall be less for the 1978-1979, 1979-1980, 1980-1981 or the 1981-1982 school year than its gross allocation under such sections for the previous school year.

(b) If the sums appropriated for the 1982-1983 school year and each school year thereafter are not sufficient to pay in full the total amounts to which all qualified school districts, intermediate units, area vocational-technical schools and nonpublic schools are entitled to receive under the provisions of sections 917.1-A, 919.1-A, 922.1-A, 923-A(d) and 2502.8[2] for such year, the allocations to the school districts, intermediate units, area vocational-technical schools and nonpublic schools shall be proportionately reduced to the extent necessary to bring the aggregate of the school district, intermediate unit, area vocational-technical school and nonpublic school allocations within the limits of the amounts appropriated.

1949, March 10, P.L. 30, 2502.6; added 1979, July 13, P.L. 94, No. 41, 5, effective July 1, 1979. Amended 1981, July 1, P.L. 200, No. 62, 2, imd. effective; 1982, May 11, P.L. 396, No. 115,

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1. P.S. §§ 9-967.1, 9-969.1, 9-972.1, 9-973(d), 25-2501, 25-2502, 25-2502.3, 25-2502.4 and 25-2502.8.

2. 24 P.S. §§ 9-967.1, 9-969.1, 9-972.1, 9-973(d) and 25-2502.8.

6, effective July 1, 1982; 1983, Dec. 20, P.L. 267, No. 73, 8, imd. effective; 1986, July 10, P.L. 1270, No. 117, 14, imd. effective.

Repealed In Part

Section 9 of Act 1983, July 23, P.L. 104, No. 31, repealed this section insofar as it was inconsistent with said act.

§ 25-2502.7. Repealed. 1983, July 22, P.L. 104, No. 31, § 9, imd. effective

§ 25-2502.8. Payments on account of pupils enrolled in vocational curriculums

(a) For the purpose of reimbursement in accordance with this section, vocational curriculums are agriculture education, distributive education, health occupations education, home economics education (gainful), business education, technical education, trade and industrial education, or any other occupational oriented program approved by the Secretary of Education.

(b) For the 1981-1982 school year through the 1984-1985 school year, each school district so entitled shall be paid, in addition to any other subsidy to which it is entitled, an amount on account of resident pupils enrolled in vocational curriculums—and, for the 1985-1986 school year and each school year thereafter, each school district and area vocational-technical school shall be paid an amount on account of students enrolled in vocational curriculums—determined as follows:

(1) Determine the increase in the weighted average daily membership by multiplying the number of students in average daily membership in vocational curriculums in area vocational-technical schools by twenty-one hundredths (.21) and the number of students in average daily membership in school district vocational curriculums by seventeen hundredths (.17).

(2) Multiply the lesser of the district's actual instruction expense per weighted average daily membership or the base

earned for reimbursement by the market value/income aid ratio or by three hundred seventy-five thousandths (.375), whichever is greater.

(3) Multiply the increase in weighted average daily membership determined in clause (1) by the result of clause (2).

(4) For the 1985-1986 school year and each school year thereafter, the Commonwealth shall pay the amount required by this section to the school district or area vocational-technical school which provides the program upon which reimbursement is based.

§ 25-2502.9. Repealed. 1983, July 22, P.L. 104, No. 31, § 9, imd. effective

§ 25-2502.10. Temporary special aid to school districts due to real property reassessments

(a) For the school year 1978-1979 and each school year thereafter, a school district experiencing a fifteen per centum (15%) loss in total local revenue for the support of the public schools in any one (1) year due to the reassessment of one or more properties within the boundaries of the public school district shall qualify for special aid for a period of two (2) years on the condition that the school district tax rates which were in effect at the time of the reassessment are not reduced. Countywide reassessment shall not qualify a district for this special aid.

(b) During the first year of the reduction in revenue caused by the reassessment, a school district shall qualify for and receive a special grant equal to fifty per centum (50%) of the reduction, and in the following school year the district shall qualify for and receive a special grant equal to twenty-five per centum (25%) of the reduction in revenue caused by the reassessment: Provided, however, That a school district that qualified for such payments prior to the date of this amendatory act shall receive its first payment in the year this amendatory act is enacted.

(c) The special aid authorized by this section shall be paid from undistributed basic instruction subsidy funds to the

extent that such funds are available. Beginning with payments made during the 1987-1988 school year and each school year thereafter, the special aid authorized by this section shall be paid from any funds not expended, encumbered or committed from appropriations for grants and subsidies made to the Department of Education: Provided, that no funds available from appropriations for library-related activities may be used for these payments.

(d) The provisions of this subsection shall apply to any school district qualifying for the temporary aid provided for in this section and receiving its second year of such aid during the 1982-1983 school year. For the purpose of computing a school district's equalized subsidy for basic education for the 1982-1983 school year, as provided for and limited by 24 Pa.C.S. § 2903(b)(2) (relating to limitation of certain payments), the Department of Education shall adjust the computation of payments on account of section 2502.9[1] of this act for the 1981-1982 school year as follows: the department shall recompute the district's guarantee, as provided for in section 2502.9(a) of this act, by adding to the computation of the guarantee for the 1980-1981 school year the amount of the second year payment of temporary special aid provided for in this section: Provided, however, That no district shall receive a lesser subsidy for the 1982-1983 school year as a result of such revised computation, nor a subsidy in excess of the full amount to which it would be entitled under the provisions of 24 Pa.C.S. §§ 2902 (relating to payments on account of instruction) and 2905 (relating to economic supplement) and that no district shall be entitled to an increased subsidy payment for the 1981-1982 school year as a result of such revised computation.

§ 25-2502.11. Economic supplement

(a) For the school year 1982-1983 through the school year 1990-1991, each qualifying school district shall be paid, in addition to any other payments to which it is entitled, an eco-

1. 24 P.S. § 25-2502.9 (repealed).

nomic supplement, based upon children in low-income families, local tax effort and population per square mile.

(b) For the school years 1982-1983 through 1986-1987, each qualifying school district shall be paid on account of children in low-income families an amount in accordance with the following table:

Percentage of Low-Income Pupils In Average Daily Membership	Grant Per Low-Income Pupil
10- 19.9	$100
20-39.9	$300
40 or over	$500

For the school year 1987-1988, each qualifying school district shall be paid on account or children in low-income families an amount in accordance with the following table:

Percentage of Low-Income Pupils In Average Daily Membership	Grant Per Low-Income Pupil
8-14.9	$128
15-29.9	$357
30 or over	$587

For the school years 1988-1989 and 1989-1990, each qualifying school district shall be paid on account of children in low-income families an amount in accordance with the following table:

Percentage of Low-Income Pupils In Average Daily Membership	Grant Per Low-Income Pupil
8-14.9	6% of the factor for educational expense used to make payments on account of instruction, as provided for in section 2501(19).[1]
15-29.9	16% of the factor for educational expense used to make payments on account of instruction, as provided for in section 2501(19).

1. 24 P.S. § 25-2501(9.3).

30 or over	27% of the factor for educational expense used to make payments on account of instruction, as provided for in section 2501(19).

For the school year 1990-1991, each qualifying school district shall be paid on account of children in low-income families an amount in accordance with the following table:

Percentage of Low-Income Pupils In Average Daily Membership	Grant Per Low-Income Pupil
8-14.9	6% of the factor for educational expense used to make payments on account of instruction, as provided for in section 2501(19).
15-19.9	16% of the factor for educational expense used to make payments on account of instruction, as provided for in section 2501(19).
20-29.9	23% of the factor for educational expense used to make payments on account of instruction, as provided for in section 2501(19).
30 or over	27% of the factor for educational expense used to make payments on account of instruction, as provided for in section 2501(19).

For the 1982-1983 school year through the 1990-1991 school year, low-income pupils are defined for purposes of this section as children aged five (5) to seventeen (71) years, inclusive, in families receiving a grant in excess of two thousand dollars ($2,000) from the Commonwealth on account of dependent children under Title IV of the Federal Social Security Act.

(c) For the school year 1982-1983 through the school year 1987-1988, any district which levies and collects local taxes for

school purposes equal to or above the median equalized millage, as defined in section 2501(9.3)[1] in the year for which reimbursement is determined shall qualify for and receive a payment based upon local tax effort and population per square mile in accordance with the following table, except for qualifying districts which include a central city of a Standard Metropolitan Statistical Area and have a district population of less than four thousand (4,000) persons per square mile, which districts shall receive three percent (3%) of their instructional expenditures:

Population Per Square Mile of the Qualifying District	Payment as Percent of Instructional Expenditure
5,950 and over	5
4,000 - 5,949	3
less than 4,000	1

Notwithstanding the provisions of this subsection, districts having a general population of five thousand nine hundred fifty (5,950) or more persons per square mile and at least thirty-five thousand (35,000) WADMs shall be paid nineteen percent (19%) of their instructional expenditures.

(d) For the school year 1988-1989 through the school year 1990-1991, any district which levies and collects local taxes for school purposes equal to or above the median equalized millage, as defined in section 2501(9.3), in the year for which reimbursement is determined or any school district the majority of whose population is drawn from a city of the first through third class which levies and collects local taxes for municipal purposes equal to or above the municipal median equalized millage, as defined in section 2501(9.5),[2] for the most recent municipal fiscal year for which data is available shall qualify for and receive a payment based upon local tax effort and population per square mile in accordance with the following table, except for qualifying districts which include a central city of a Standard Metropolitan Statistical Area and have a district population of less than four thousand (4,000) persons

1. 24 P.S. § 25-2501(9.3).
2. 24 P.S. § 25-2501(9.5).

per square mile, which districts shall receive three percent (3%) of their instructional expenditures:

Population Per Square Mile of the Qualifying District	Payment as Percent of Instructional Expenditure
5,950 and over	5
4,000 - 5,949	3
less than 4,000	1

Qualifying districts having a general population or five thousand nine hundred fifty (5,950) or more persons per square mile and at least thirty-five thousand (35,000) WADM's shall be paid nineteen percent (19%) of their instructional expenditures. For the 1990-1991 school year, a central city of a Standard Metropolitan Statistical Area which has an equalized millage as defined in clause (9.2) or section 2501[3] to be greater than the median equalized millage by ten and twenty-nine hundredths (10.29) and has an estimated 1990-1991 Weighted Average Daily Membership (WADM) provided by the Department of Education in June 1991 that is less than the actual 1989-1990 Weighted Average Daily Membership by two hundred (200) shall receive an additional two percent (2%) of their 1990-1991 actual instructional expenditure.
Amended 1993, June 7, P.L. 49, No. 16, § 16, effective July 1, 1993.

§ 25-2502.12. Revised computations of certain payments

For the purpose of computing a school district's equalized subsidy for basic education for the 1982-1983 school year, as provided for and limited by 24 Pa.C.S. § 2903(b)(2) (relating to limitation of certain payments), the Department of Education shall adjust the computation of payments on account of section 2502.9 of this act for the 1981-1982 school year as follows: The department shall recompute the district's guarantee, as provided for in section 2502.9(a)[1] of this act, for the 1980-1981 school year, so as not to account for the subsidy increase limitation imposed by the act of July 1, 1981 (P.L. 628, No. 5a), known as the "General Appropriation Act of 1981": Provided,

3. 24 P.S. § 25-2501(9.2).
1. 24 P.S. § 25-2509.2.

however, That no district shall receive a lesser subsidy for the 1982-1983 school year under the provisions of 24 Pa.C.S. §§ 2902 (relating to payments on account of instruction) and 2905 (relating to economic supplement), or section 2502.10[2] of this act, as a result of such revised computation and that no district shall be entitled to all increased subsidy payment for the 1981-1982 school year as a result of such revised computation. If the amounts appropriated for the equalized subsidy for basic education for the 1982-1983 school year are insufficient to pay in full the amounts to which districts affected by the limitation in the "General Appropriation Act of 1981" are entitled, payments to such districts shall be proportionately reduced to the extent necessary to bring the payments within the limits of the amounts appropriated: Provided, however, That computation of payments to be made beginning in the 1984-1985 fiscal year shall be based upon a district's full entitlement under the provisions of this section, any such proportionate reduction notwithstanding.

§ 25—2502.13. Small district assistance

For the 1984-1985 and 1985-1986 school years, the Commonwealth shall pay to each school district which has an average daily membership of one thousand five hundred (1,500) or less and has a market value/income aid ratio of five thousand ten-thousandths (0.5000) or greater, an amount equal to fifty dollars ($50) multiplied by that district's average daily membership. For the 1985-1986 school year, no school district shall receive less on account of this section than it did for the 1984-1985 school year. For the school year 1986-1987, the Commonwealth shall pay to each school district which has an average daily membership of one thousand five hundred (1,500) or less and has a market value/income aid ratio of five thousand ten-thousandths (0.5000) or greater, or received payments under this section for the 1985-1986 school year, an amount equal to seventy-five dollars ($75) multiplied by that district's average daily membership. For the school year 1987-1988, the Commonwealth shall pay to each school district which has an aver-

2. 24 P.S. § 25-2502.10.

age daily membership of one thousand five hundred (1,500) or less and a market value/income aid ratio of five thousand ten-thousandths (0.5000) or greater, or received payments under this section for the 1986-1987 school year, an amount equal to eighty-five dollars ($85) multiplied by that district's average daily membership. For the school year 1988-1989, the Commonwealth shall pay to each school district which has an average daily membership of one thousand five hundred (1,500) or less and a market value/income aid ratio of five thousand ten thousandths (0.5000) or greater, or received payments under this section for the 1987-1988 or 1988-1989 school year, an amount equal to one hundred five dollars ($105). For the school year 1989-1990, the Commonwealth shall pay to each school district which has an average daily membership of one thousand five hundred (1,500) or less and a market value/income aid ratio of five thousand ten-thousandths (0.5000) or greater, or received payments under this section for the 1987-1988 school year, an amount equal to one hundred fifteen dollars ($115) multiplied by the district's average daily membership as provided for in section 212 of the act of July 1, 1990 (P.L. 1591, No. 7A), known as the "General Appropriation Act of 1990." For the school year 1990-1991, the Commonwealth shall pay to each school district which has an average daily membership of one thousand five hundred (1,500) or less and a market value/income aid ratio of five thousand ten-thousandths (0.5000) or greater, or received payments under this section for the prior school year, an amount equal to one hundred seventy dollars ($170) multiplied by that district's average daily membership. For the school year 1990-1991, each school district with a population per square mile of less than ninety (90), which otherwise meets the average daily membership and market value/income aid ratio requirements of this section, or received payments under this section for the prior school year, shall instead receive an amount equal to one hundred ninety dollars ($190) multiplied by that district's average daily membership. For the 1987-1988 school year through the 1990-1991 school year, no school district shall receive less on account of this section than it did for the prior school year. For the school year 1994-1995, the Commonwealth shall pay

to each school district which has an average daily membership of one thousand five hundred (1,500) or less and a market value/income aid ratio of five thousand ten-thousandths (0.5000) or greater, an amount equal to ninety five dollars ($95) multiplied by that district's average daily membership. For the school year 1997-1998, the Commonwealth shall pay to each school district which has an average daily membership of one thousand five hundred (1,500) or less and a market value/income aid ratio of five thousand ten-thousandths (0.5000) or greater, an amount equal to seventy-five dollars ($75) multiplied by that district's average daily membership.

Amended 1993, June 7, P.L. 49, No. 16, § 17, effective July 1, 1993; 1995, June 30, P.L. 220, No. 26, § 9, imd. effective; 1998, Apr. 27, P.L. 270, No. 46, § 16, effective July 1, 1998.

§ 25-2502.14. School supplement

(a) For the 1985-1986 school year only, each school district shall be paid an amount based upon the percentages of its entitlement under the provisions of subsections (d) and (e) of section 2502[1] and section 2502.11,[2] as limited by the provisions of section 2502.5,[3] in accordance with the following table:

Percent of Fully Funded ESBE	Grant per WADM
100% or more	$16.00
95% or greater, but less than 100%	$17.60
90% or greater, but less than 95%	$19.21
85% or greater, but less than 90%	$20.81

(b) For the 1985-1986 school year only, each school district which experienced an average annual percentage change decrease in personal income or an average annual percentage increase in personal income between 1981 and 1984 of less than one and one-half percent (1.5%) shall be paid one percent (1%) of its actual instruction expense for the 1985-1986 school year.

1. 24 P.S. § 25-2502(d) and (e).
2. 24 P.S. § 25-2502.11.
3. 24 P.S. § 25-2502.5.

(c) For the 1985-1986 school year only, no school district shall receive a school supplement on account of the provisions of subsections (a) and (b) which is less than $18.09 per pupil in average daily membership during the 1985-1986 school year.

1949, March 10, P.L. 30, No. 14, § 2502.14, added 1986, July 10, P.L. 1270, No. 117, § 17, imd. effective.

§ 25-2502.15. First class A school district supplement

For the 1985-1986 school year only, each school district of the first class A shall receive a supplemental payment equal to one million three hundred twenty-five thousand dollars ($1,325,000). For the 1986-1987 school year, each school district of the first class A shall receive a supplemental payment of one million dollars ($1,000,000).

1949, March 10, P.L. 30, No. 14, § 2502.15, added 1986, July 10, P.L. 1270, No. 117, § 17, imd. effective. Amended 1987, July 10, P.L. 286, No. 50, § 2, imd. effective.

§ 25-2502.16. Temporary special aid to school districts suffering loss of tax revenue due to bankruptcy of businesses in the school district

(a) For the school year 1985-1986 and each school year thereafter, a school district experiencing a ten percent (10%) or greater loss in revenue from real estate taxes for the support of the public schools in any one school year, compared with real estate tax collections the previous year, due to the nonpayment of such taxes within sixty (60) days of the due date for the payment of such taxes during such school year or during the preceding school year by any businesses owning real estate within the boundaries of such school district, by reason of bankruptcy proceedings under Chapter 7, 11 or 13 of the Bankruptcy Code (11 U.S.C. § 101 et seq.) shall qualify for temporary special aid under the provisions of this section for a period of two years as provided for in subsection (b).

(b) Such temporary special aid shall be equal to the amount of lost real estate tax revenues provided for in subsection (a), payable to the school district during the school year in which such loss due to bankruptcy proceedings is suffered, plus an amount equal to fifty percent (50%) of such amount

payable to the school district during the succeeding school year. Such temporary special aid shall be paid only once for each such bankruptcy proceeding and only upon the condition that the school district tax rates which were in effect at the time of the bankruptcy proceeding are not reduced. A school district which suffered the loss in real estate tax revenues provided for in subsection (a) during the 1985-1986 or the 1986-1987 school year shall be eligible to receive its first payment of temporary special aid during the 1986-1987 school year.

(c) The temporary special aid provided for in this section shall be paid from undistributed equalized subsidy for basic education funds to the extent that such funds are available. Beginning with payments made during the 1987-1988 school year and each school year thereafter, the special aid authorized by this section shall be paid from any funds not expended, encumbered or committed from appropriations for grants and subsidies made to the Department of Education: Provided, that no funds available from appropriations for library-related activities may be used for these payments.

(d) Deleted. 1993, June 7, P.L. 49, No. 16, § 18, effective July 1, 1993.

(e) Nothing contained in this section shall disqualify a school district from receiving temporary special aid due to real property reassessments provided for in section 2502.10:[1] Provided, however, That reassessments resulting from bankruptcy proceedings shall not qualify a school district for the temporary special aid provided for in section 2502.10 during the same school year in which such school district receives temporary special aid for such revenue loss according to the provisions of this section.

(f) The special payments authorized by this section and section 2502.10 shall be paid from a restricted revenue account, which is hereby established, for such payments. Funds shall be transferred by the Secretary of the Budget only to the extent necessary to make the payments authorized by this section and section 2502.10.

(g) The Secretary of the Budget shall provide to the Chairman and Minority Chairman of the Senate Appropria-

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1. 24 P.S. § 25-2502.10.

tions Committee and the Chairman and Minority Chairman of the House Appropriations Committee information concerning the appropriation from which funds have been transferred and the amounts transferred. The Department of Education shall have a written policy concerning the method for making payments to school districts, including the date by which payments shall be made each fiscal year.

§ 25-2502.17. Low-expenditure, low-wealth supplement

For the 1990-1991 school year, the Commonwealth shall pay to each school district which has a market value/income aid ratio of six thousand ten-thousandths (0.6000) or greater and has an actual instruction expenditure per weighted average daily membership for the school year prior to the reimbursable year, which is less than the Statewide median actual instruction expenditure per weighted average daily membership for that year, an amount equal to one and three-tenths percent (1.3%) of the school district's actual instruction expenditure for the reimbursable year: Provided. That no school district shall receive a dollar amount, which, when combined with its actual instruction expenditure for the year prior to the reimbursable year, would result in the district's actual instruction expenditure per weighted average daily membership exceeding the Statewide median actual instruction expenditure per weighted average daily membership for the year prior to reimbursement.

Amended 1993, June 7, P.L. 49, No. 16, § 19, effective July 1, 1993.

§ 25-2502.18. Low-expenditure poverty supplement

For the 1990-1991 school year, the Commonwealth shall pay to each school district, which has an actual instruction expenditure per weighted average daily membership for the school year prior to the reimbursable year, which is less than three thousand four hundred forty-five dollars ($3,445), and has ten percent (10%) or more of its pupils in average daily membership as children in low-income families, an amount equal to one-half percent (.5%) of their actual instruction

expenditure.

Amended 1993, June 7, P.L. 49, No. 16, § 19, effective July 1, 1993.

§ 25-2502.19. Limitation of payments

Notwithstanding any other provision of this article, for the 1991-1992 school year only, the Commonwealth shall pay to each school district an equalized subsidy for basic education (ESBE) which shall consist of the same ESBE payment made to the school district for the 1990-1991 school year.

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.19, added 1992, July 9, P.L. 392, No. 85, § 2, effective in 60 days.

§ 25-2502.20. Subsidy payments

For the 1992-1993 school year, each school district shall be paid a subsidy amount based upon the provisions of sections 2502.21, 2502.22, 2502.24, 2502.25 and 2502.26.[1]

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.20, added 1993, June 7, P.L. 49, No. 16, 4 20, effective July 1, 1993.

§ 25-2502.21. Education subsidy base

For the 1992-1993 school year, the Commonwealth shall pay to each school district an education subsidy base which shall consist of the same amount that the district was entitled to receive for the 1990-1991 school year pursuant to sections 2502(d) and (e)[1] and 2502.11,[2] both as adjusted pursuant to section 2502.5(b),[3] if applicable, and sections 2502.13, 2502.17 and 2502.18.[4] For the 1993-1994 school year, the Commonwealth shall pay to each school district an education subsidy base which shall consist of the same amount that the district was entitled in receive for the prior school year pursuant to section 2502.20.[5]

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1. 24 P.S. §§ 25-2502.21, 25-2502.22, 25-2502.24, 25-2502.25, 25-2502.26.
1. 24 P.S. § 2502(d), (e).
2. 24 P.S. § 25-2502.11.
3. 24 P.S. § 25-2502.5(b).
4. 24 P.S. §§ 25-2502.13, 25-2502.17, 25-2502.18.
5. 24 P.S. § 25-2502.20.

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.21, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993.

§ 25-2502.22. Equity supplement

(a) For the 1992-1993 school year, each school district may qualify for payment of the supplement based upon market value/income aid ratio, local tax effort and total expenditure per average daily membership.

(b) To qualify for such supplement, districts shall meet all of the following criteria:

(1) The district's market value/income aid ratio for the school year immediately preceding the school year for which reimbursement is being paid is greater than or equal to five thousand ten-thousandths (0.5000).

(2) The district's equalized millage for the school year immediately preceding the school year for which reimbursement is being paid is greater than or equal to nineteen five-tenths (19.5).

(3) The district's total expenditure per average daily membership for the school year two (2) years prior to the school year for which reimbursement is being paid is less than or equal to six thousand one hundred ninety-three dollars ($6,193).

(c) The Commonwealth shall pay to each qualifying school district, as determined pursuant to subsection (b), a supplement in an amount calculated as follows:

(1) Determine the product of the district's average daily membership for the school year for which reimbursement is being paid and the district's market value/income aid ratio for the school year for which reimbursement is being paid.

(2) Multiply the result of the calculation pursuant to clause (1) by ninety-three million dollars ($93,000,000).

(3) Divide the result of the calculation pursuant to clause (2) by the sum of the products obtained for all qualifying school districts pursuant to clause (1).

(d) For the school year 1992-1993, each school district that does not qualify for the supplement described in subsec-

tions (a) through (c) may qualify for payment of a supplement based upon children in low-income families.

(e) To qualify for the supplement described in subsection (d), the number or children in low-income families residing in the district for the calendar year that concluded during the school year immediately preceding the year for which reimbursement is being paid divided by the district's average daily membership for the school year two (2) years prior to the school year for which reimbursement is being paid must be greater than or equal to thirty-five percent (35%).

(f) The Commonwealth shall pay to each qualifying school district, as determined pursuant to subsections (d) and (e), a supplement in the amount of one hundred dollars ($100) multiplied by the number of children in low-income families residing in the district for the calendar year that concluded during the school year for which reimbursement is being paid.

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.22, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993.

§ 25-2502.23. Minimum effort base

The minimum effort base shall be, for the purposes of qualifying for foundation guarantee payments, the level of local revenue resources available per pupil in average daily membership. For the 1992-1993 school year, the local revenue resources available per pupil in average daily membership shall be computed by multiplying the 1990 Real Property Valuation of the district by one hundred and ninety-five ten-thousandths (0.0195).

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.23, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993.

§ 25-2502.24. Foundation guarantee

The foundation guarantee is the minimum level of revenue resources that shall be available to support each pupil in average daily membership in the school districts of the Commonwealth. For the 1992-1993 school year, the foundation guarantee amount shall be the difference between three thou-

sand eight hundred seventy-five dollars ($3,875) and the sum of the amounts described in sections 2502.21, 2502.22 and 2502.23[1] for that year divided by the number of pupils in average daily membership in the district for the 1990-1991 school year. For the 1992-1993 school year, the Commonwealth shall pay to each qualifying school district, as a foundation guarantee payment, the foundation guarantee amount multiplied by the number of pupils in average daily membership in the district for the 1990-1991 school year.

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.24, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993.

§ 25-2502.25. Growth supplement

(a) For the school year 1992-1993, each school district may qualify for payment of a supplement based upon growth in the school district's average daily membership, in addition to any other subsidy to which the district may be entitled.

(b) To qualify for the growth supplement pursuant to this section, the district's average daily membership for the school year immediately preceding the school year for which reimbursement is being paid must have increased by at least four and five-tenths percent (4.5%) or by at least two hundred fifty (250) pupils in average daily membership compared to the school year two (2) years prior to the school year for which reimbursement is being paid.

(c) The Commonwealth shall pay to each qualifying school district pursuant to subsections (a) and (b) a supplement in an amount calculated as follows:

(1) Subtract the district's average daily membership for the school year two (2) years prior to the school year for which reimbursement is being paid from the district's average daily membership for the school year for which reimbursement is being paid.

(2) Multiply the result of the calculation pursuant to clause (1) by the district's market value/income aid ratio for the school year for which reimbursement is being paid.

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1. 24 P.S. §§ 2502.21, 25-2502.22, 25-2502.23.

(3) Multiply the result of the calculation pursuant to clause (2) by four hundred dollars ($400).

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.25, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993.

§ 2502.26. Limited revenue sources supplement

(a) For the 1992-1993 school year, each school district that does not qualify for any supplement contained in sections 2502.22, 2502.24 and 2502.25[1] may qualify for payment of a limited revenue sources supplement.

(b) To qualify for such supplement, the district's market value/income aid ratio for the school year immediately preceding the school year for which reimbursement is being paid must be greater than or equal to seven thousand ten-thousandths (0.7000).

(c) The Commonwealth shall pay to each qualifying district, as determined pursuant to subsections (a) and (b), a supplement in an amount equal to the district's average daily membership for the school year for which reimbursement is being paid, multiplied by two percent (2%) of three thousand eight hundred seventy-five dollars ($3,875).

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.26, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993.

§ 25-2502.27. Discretionary funds to assist school districts experiencing extreme financial difficulty

(a) A sum of one million dollars ($1,000,000) from the amount appropriated in the act of May 28, 1993 (P.L. 589, No. 1A), known as the General Appropriation Act of 1993, for the equity supplement, and any remainder if the sum appropriated for the 1993-1994 fiscal year for payments in section 2502.20[1] exceeds the amounts to which all qualifying school districts are entitled, shall be set aside as discretionary funds to assist school districts that have been declared distressed pursuant to

1. 24 P.S. §§ 2502.22, 25-2502.24, 25-2502.25.

1. 24 P.S. § 25-2502.20.

section 691[2] and/or school districts in need of additional support because of extreme financial difficulties. The Secretary of Education shall establish guidelines for school districts' applications for these funds, department approval of applications for funds, department distribution of funds and school districts' expenditure of these funds. The Secretary of Education shall report to the General Assembly on such expenditures.

(b) For the 1996-1997 fiscal year, the sum of one million four hundred fifty thousand dollars ($1,450,000) shall be allocated by the Secretary of Education to school districts which previously received payments under subsection (a) and which do not receive funding under section 2502.30 of this act. The allocation shall be made from undistributed funds not expended, encumbered or committed from appropriations for any fiscal year from grants and subsidies made to the Department of Education. The school districts shall receive an amount equal to the amount previously received pursuant to subsection (a).

(c) Payments made pursuant to subsection (b) shall be paid from a restricted receipt account, which is hereby established, for such payments. Funds shall be transferred by the Secretary of the Budget to the restricted account only to the extent necessary to make the payments authorized by this section. The money in the restricted account is hereby appropriated from the account for purposes of this section.

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.27, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993. Amended 1996, July 11, P.L. 633, No. 107, § 7, imd. effective.

§ 25-2502.28. Resource data for foundation-based equity formula development

(a) The Secretary of Education shall develop and collect data necessary to assist in policy development for the transition to a foundation-based equity formula in fiscal year 1994-1995. Data shall be collected which will assist in the development of definitions of factors and in determining the

2. 24 P.S. § 6-691.

relative importance of various factors which impact on a school district's ability to provide educational opportunities for its students. Such factors shall include, but not be limited to:

(1) Regional costs.

(2) Students in poverty.

(3) Students in special education programs.

(4) Local revenue sources.

(5) State revenue sources.

(6) Other potential State and local revenue sources.

(b) The initial report on the data system and data collected shall be submitted to the majority chairman and the minority chairman of the Education Committee of the Senate and the majority chairman and the minority chairman of the Education Committee of the House of Representatives by January 1, 1994.

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.28, added 1993, June 7, P.L. 49, No. 16, § 20, effective July 1, 1993.

§ 25-2502.29. Basic education funding

(a) For the purposes of this section, the phrase "base amount" shall mean for each school district the amount of funds received by the school district for the school year 1993-1994 pursuant to section 2502.21 plus the amount of funds received by the school district for foundation funding for equity for school year 1993-1994 pursuant to the act of June 16, 1994 (P.L. 1473, No. 6A), known as the "General Appropriation Act of 1994," and any supplements thereto.

(b)(1) For 1994-1995 school year, each school district shall receive the amount calculated pursuant to clause (2) or (3), whichever is greater.

(2) The base amount of the district divided by the average daily membership of the district during the 1993-1994 school year multiplied by one hundred three per centum (103%) multiplied by the average daily membership of the district during the 1994-1995 school year.

(3) The base amount of the district multiplied by one hundred one per centum (101%) if the market value/income

aid ratio (MV/PIAR) is less than five thousand ten-thousandths (0.5000), the base amount of the district multiplied by one hundred two per centum (102%) if the market value/income aid ratio (MV/PIAR) is greater than or equal to five thousand ten-thousandths (0.5000) and less than seven thousand ten-thousandths (0.7000), and the base amount of the district multiplied by one hundred four per centum (104%) if the market value/income aid ratio (MV/PIAR) is greater than or equal to seven thousand ten-thousandths (0.7000).

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.29, added 1995, June 30, P.L. 220, No. 26, § 10, imd. effective. Amended 1996, July 11, P.L. 633, No. 107, § 8, imd. effective.

§ 25-2502.30. Temporary special aid to school districts suffering loss of tax revenue due to reduction in assessed valuation of taxable property

(a) Temporary special aid shall be paid in fiscal years 1994-1995, 1995-1996, 1996-1997 and 1997-1998 to school districts experiencing a severe reduction in local revenue due to a decline in the assessed value of taxable properties. The allocation to these districts shall be determined by multiplying the reduction in assessed value between 1985-1986 and 1992-1993 by the 1992-1993 real estate millage rate. This aid shall be paid from undistributed funds not expended, encumbered or committed from appropriations for grants and subsidies made to the Department of Education. No other funds shall be used for assistance under this section. These funds shall be sufficient to provide temporary relief to seven school districts in fiscal year 1995-1996 at seventy-five per centum (75%) of the funds received in fiscal year 1994-1995, in fiscal year 1996-1997 at fifty per centum (50%) of the funds received in fiscal year 1994-1995 and in fiscal year 1997-1998 and 1998-1999 at twenty-five per centum (25%) of the funds received in fiscal year 1994-1995). This section shall expire October 1, 1999.

(b) payments made pursuant to subsection (a) shall be paid from a restricted receipt account, which is hereby established, for such payments. Funds shall be transferred by the Secretary of the Budget to the restricted account only to the extent necessary to make the payments authorized by this sec-

tion. The money in the restricted account is hereby appropriated from the account for purposes of this section.

1949, March 10, P.L. 30, No. 14, art. XXV, § 2502.30, added 1995, June 30, P.L. 220, No. 26, § 10, imd. effective. Amended 1996, July 11, P.L. 633, No. 107, § 8, imd. effective; 1998, April 27, P.L. 270, No. 46, § 17, effective July 1, 1998.

§ 25-2502.31. Basic education funding

For the 1995-1996 school year, the Commonwealth shall pay to each school district a basic education funding allocation which shall equal the amount that the school district was entitled to receive, prior to any adjustments made under the provisions of this act, for the 1994-1995 school year pursuant to sections 2502.13 and 2502.29[1] but which shall be subject to all adjustment provisions of this act for the 1995-1996 school year.

1949, March 10, P.L. 30, No. 14, § 2502.31, added 1996, July 11, P.L. 633, No. 107, § 9, imd. effective.

§ 25-2502.32. For court-ordered payments to Woodland Hills School District

The Secretary of the Budget shall determine the amount necessary to make court-ordered payments to the Woodland Hills School District. The Secretary of the Budget shall transfer the amount necessary from any funds not expended, encumbered or committed from appropriations for grants and subsidies made to the Department of Education in any fiscal year to a restricted account which is hereby established. The money in the restricted account is hereby appropriated from the account for the purposes of this section.

1949, March 10, P.L. 30, No. 14, § 2502.32, added 1996, July 11, P.L. (633, No. 107, § 9, mid. effective.

§ 25-2502.33. Basic education funding for 1996-1997 school year

For the 1996-1997 school year, the Commonwealth shall pay to each school district a basic education funding allocation which shall consist of the following:

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1. 124 P.S. §§ 25-2502.13 and 25-2502.29.

(1) An amount equal to the basic education funding allocation for the 1995-1996 school year pursuant to section 2502.31.[1]

(2) A base supplement payable to qualifying school districts.

(i) To qualify for the base supplement, a school district's 1997-1998 market value/income aid ratio must be equal to or greater than four thousand ten-thousandths (0.4000).

(ii) The base supplement is calculated for qualifying school districts as follows: multiply the school district's 1997-1998 market value/income aid ratio times its 1996-1997 average daily membership; multiply this product times sixty-six million dollars ($66,000,000); divide the resultant product by the sum of the products or the 1997-1998 market value/income aid ratio times the 1996-1997 average daily membership for all qualifying districts.

(3) A growth supplement payable to qualifying school districts.

(i) To qualify for the growth supplement, a school district's average daily membership must have increased between the 1994-1995 and 1996-1997 school years.

(ii) The growth supplement is calculated for qualifying school districts as follows: if the increase in average daily membership between the 1994-1995 and 1996-1997 school years is equal to or greater than four and five-tenths per centum (4.5%), multiply two hundred dollars ($200) times the increase in average daily membership; if the increase is less than four and five-tenths per centum (4.5%), multiply one hundred dollars ($100) times the increase in average daily membership.

(4) Each school district will be guaranteed a minimum increase to be calculated as follows:

(i) Each school district with a 1997-1998 market value/income aid ratio equal to or greater than seven thousand ten-thousandths (0.7000) will receive additional funding, as

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1. 124 P.S. § 25-2503.31.

necessary, so that the sum of the amounts in clauses (2), (3) and (4) will equal at least four per centum (4%) of the amount in clause (1).

(ii) Each school district with a 1997-1998 market value/income aid ratio less than seven thousand ten-thousandths (0.7000) will receive additional funding, as necessary, so that the sum of the amounts in clauses (2), (3) and (4) will equal at least one per centum (1%) of the amount in clause (1).

1949, March 10, P.L. 30, No. 14, art. XIX, § 2502.33, added 1997, June 25, P.L. 297, No. 30, § 13, effective July 1, 1997.

§ 25-2502.34. School Performance Incentives

For the 1997-1998 fiscal year, a minimum of ten per centum (10%) of the difference between the total Basic Education Funding appropriation for the prior fiscal year and the current risen] year, as provided in Article XXV,[1] shall be directed for School Performance Incentives as established by the department. For the 1998-1999 fiscal year and each fiscal year thereafter, funding for School Performance Incentives shall be as provided in the General Appropriation Act.

1949, March 10, P.L. 30, No. 14, art. XIX, § 2502.34, added 1997, June 25, P.L. 297, No. 30, § 13, effective July 1, 1997.

§ 25-2502.35. Basic education funding for 1997-1998 school year

For the 1997-1998 school year, the Commonwealth shall pay to each school district a basic education funding allocation which shall consist of the following:

(1) An amount equal to the basic education funding allocation for the 1996-1997 school year pursuant to section 2502.33.[1]

(2) A base supplement payable to qualifying school districts.

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1. 24 P.S. § 25-2509.1(d).

1. 24 P.S. § 25-2502.33.

(i) To qualify for this base supplement, a school district's 1998-1999 market value/income aid ratio must be equal to or greater than four thousand ten-thousandths (0.4000).

(ii) The base supplement is calculated for qualifying school districts as follows: multiply the school district's 1998-1999 market value/income aid ratio times its 1997-1998 average daily membership; multiply this product times eighty-five million five hundred thousand dollars ($85,500,000); divide the resultant product by the sum of the products of the 1998-1999 market value/income aid ratio times the 1997-1998 average daily membership for all qualifying districts.

(3) A growth supplement is calculated for qualifying school districts as follows: multiply the increase in average daily membership between the 1996-1997 and 1997-1998 school years times four hundred dollars ($400).

(4) A poverty supplement to qualifying school districts.

(i) To qualify for the poverty supplement, the number of children in low-income families residing in the district for the 1997 calendar year divided by the district's average daily membership for the 1997-1998 school year must be greater than or equal to ten per centum (10%).

(ii) The poverty supplement is calculated for qualifying school districts by multiplying the number of children in low-income families as defined in section 2501(21)[2] residing in the district for the 1997 calendar year times fifty dollars ($50).

(5) Each school district will be guaranteed a minimum increase to be calculated as follows:

(i) Each school district with a 1998-1999 market value/income aid ratio equal to or greater than seven thousand ten-thousandths (0.7000) will receive additional funding, as necessary, so that the sum of the amounts in clauses (2), (3), (4) and (5) will equal at least four per centum (4%) of the amount in clause (1).

(ii) Each school district with a 1998-1999 market value/income aid ratio less than seven thousand ten-thousandths (0.7000) will receive additional funding, as neces-

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2. P.S. § 25-2501(21).

sary, so that the sum of the amounts in clauses (2), (3), (4) and (5) will equal at least one per centum (1%) of the amounts in clause (1).

1949, March 10, P.L. 30, No. 14, § 2502.35, added 1998, April 27, P.L. 270, No. 46, § 18, effective July 1, 1998.

§ 25-2509.1. Payments to intermediate units

(a) Annually, before the first day of July, every intermediate unit shall submit, for prior review and approval by the Department of Education, an estimate of the cost for transportation of pupils to and from classes and schools for exceptional children, and of eligible young children to and from early intervention programs, whether or not such classes, schools or programs are conducted by the intermediate unit. On or before the first day of September, the Commonwealth shall pay to the intermediate unit a sum equal to one-half of the approved annual cost of such transportation in the prior year and, on or before the first day of February, shall pay a sum equal to one-quarter of the approved estimated annual cost of such transportation for the current school year, and on or before June 30, the Commonwealth shall pay the reamining quarter adjusted to reflect actual approved cost.

(b) On or before the first day of July 1991, every intermediate unit shall submit, for prior review and approval by the Department of Education, an estimate of the cost of operating and administering classes or schools for insitutionalized children operated by the intermediate unit during the 1990-1991 school year. During the 1991-1992 school year, the Commonwealth shall pay each intermediate unit the approved amount.

(b.1) For programs operated during the 1992-1993 school year and each school year thereafter, the Commonwealth shall pay intermediate units, based on their costs of operating and administering classes or schools for institutionalized children, an amount to be determined by the Department of Education following review of annual reports of the costs of such classes or schools for the immediately preceding year. To qualify for such payments, each intermediate unit that operates and administers classes or schools for institutionalized children annu-

ally shall submit to the Department of Education on or before the first day of July a report of the cost of operating and administering such classes or schools. Notwithstanding the foregoing, intermediate units may submit their annual reports for the 1991-1992 school year until June 30, 1993, although this date may be extended as deemed necessary by the Secretary of Education provided that for programs operated during the 1992-1993 school year and the 1993-1994 school year the aggregate amounts paid on this account shall not exceed twenty million six hundred thousand dollars ($20,600,000) per year.

(b.2) Up to twenty-one million two hundred thousand dollars ($21,200,000) may be utilized for programs operated during the 1994-1995 school year for institutionalized children by intermediate units as established in subsection (b.1).

(b.3) Up to twenty-two million dollars ($22,000,000) may be utilized for programs operated during the 1995-1996 school year for institutionalized children by intermediate units as established in subsection (b.1).

(b.4) Up to twenty million dollars ($20,000,000) may be utilized for programs operated during the 1996-1997 school year for institutionalized children by intermediate units as established in subsection (b.1).

(b.5) Up to twelve million dollars ($12,000,000) may be utilized for programs administered and operated during the 1997-1998 school year for institutionalized children by intermediate units as established in subsection (b.1).

(b.6) Up to nine million dollars ($9,000,000) may be utilized for programs administered and operated during the 1998-1999 school year for institutionalized children by intermediate units as established in subsection (b.1).

(c) For the 1991-1992 school year and each school year thereafter, five percent (5%) of the State special education appropriation shall be paid to the intermediate units on account of special education services. Of this five percent (5%), thirty-five percent (35%) shall be distributed equally among all twenty-nine (29) intermediate units. The remaining

sixty-five percent (65%) shall be distributed to each intermediate unit in proportionto the number of average daily membership of the component school districts of each intermediate unit as compared to the Statewide total average daily membership.

(d)(1) For the 1991-1992 school year, each intermediate unit which is coterminous to a school district of the first class or first class A shall be paid fifty percent (50%) of the amount received by the intermediate unit for the cost of operating and administering classes or schools for children with exceptionalities, as approved by the Department of Education for the 1990-1991 school year. For the 1991-1992 school year, each intermediate unit not coterminous with a school district which operates all the special education programs for children with disabilities for its constituent school districts shall be paid ten percent (10%) of the amount received by the intermediate unit for the cost of operating and administering classes or schools for children with disabilities, as approved by the Department of Education for the 1990-1991 school year. For the 1992-1993 and the 1993-1994 school years up to and including the 1994-1995 school year, each intermediate unit which is coterminous to a school district of the first class or first class A shall be paid twenty-five percent (25%) of the amount received by the intermediate unit for the cost of operating and administering classes or schools for children with exceptionalities, as approved by the Department of Education for the 1990-1991 school year.

(2) For the 1995-1996 school year, each intermediate unit which is coterminous to a school district of the first class or first class A shall be paid a proportionate share of twenty-nine million nine hundred thousand dollars ($29,900,000) based on the amount received by the intermediate unit for the cost of operating and administering classes or schools for children with exceptionalities, as approved by the Department of Education for the 1990-1991 school year.

(3) For the 1996-1997 and 1997-1998 school years, each intermediate unit which is coterminous to a school district of the first class or first class A shall be paid a proportionate share of twenty million six hundred thousand dollars

($20,600,000) based on the amount received by the intermediate unit for the cost of operating and administering classes or schools for children with exceptionalities, as approved by the Department of Education for the 1990-1991 school year.

(e) For the 1991-1992 school year and for each school year thereafter, payments to intermediate units under this section shall consist of an amount payable in three (3) installments during the school year as follows: in August, fifty percent (50%) of the payments due; in November, forty-five percent (45%) of the payments due; and on June 1, the balance of the payments due.

(f) For each school year up to and including 1990-1991, for each child enrolled in any special class or school for exceptional children operated by an intermediate unit, the school district in which the child is resident shall pay to the Commonwealth a sum equal to the "tuition charge per elementary pupil" or the "tuition charge per high school pupil," as determined for the schools operated by the district or by a joint board of which the district is a member, for the same year in which the special class or school is operated, as provided for in section two thousand five hundred sixty-one of the act to which this is an amendment. In the event that any school district has not established such "tuition charge per elementary pupil" or "tuition charge per high school pupil," the Secretary of Education shall fix a reasonable charge for such district for the year in question. Except that for the 1990-1991 school year, the school district payment to the Commonwealth under this subsection, for each child enrolled in other than intermediate unit classes or schools for institutionalized children, shall be limited to twenty-five percent (25%) of the applicable tuition charges in the case of all intermediate units. In addition, the district shall pay on account of transportation by the intermediate unit of pupils to and from classes and schools for exceptional children, whether or not conducted by the intermediate unit, an amount to be determined by subtracting from the cost of transportation per pupil the reimbursement due the district on account of such transportation. In order to facilitate such payments by the several school districts, the Secretary of Education shall withhold from any moneys due to such district

out of any state appropriation, except from reimbursements due on account of rentals as provided in section two thousand five hundred eleven point one of the act to which this is an amendment, the amounts due by such school districts to the Commonwealth. All amounts so withheld are hereby specifically appropriated to the Department of Education for the support of public schools.

(g)(1) For the 1991-1992 school year and each school year thereafter, for each child enrolled in an intermediate unit class for institutionalized children, the school district in which the child is resident shall pay to the Commonwealth a sum equal to the "tuition charge per elementary pupil" or the "tuition charge per high school pupil" as determined for the schools operated by the district or by a joint board of which the district is a member, for the same year in which the class or school is operated, as provided for in section 2561. In the event that any school district has not established such "tuition charge per elementary pupil" or "tuition charge per high school pupil," the Secretary of Education shall fix a reasonable charge for such district for the year in question.

(2) In addition, the district shall pay to the Commonwealth on account of transportation by the intermediate unit of pupils to and from classes and schools for exceptional children and of eligible young children to and from early intervention programs, whether or not conducted by the intermediate unit, and amount to be determined by subtraction from the cost of transportation per pupil the reimbursement due the district on account of such transportation.

(3) In order to facilitate such payments by the several school districts, the Secretary of Education shall withhold from any moneys due to such districts out of a State appropriation, except from reimbursements due on account of rentals, the amounts due by such school districts to the Commonwealth. All amounts so withheld are hereby specifically appropriated to the Department of Education for the support of public schools.

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1. 24 P.L. § 25-2561.

Amended 1992, July 9, P.L. 392, No. 85, § 3, effective in 60 days; 1993, June 7, P.L. 49, No. 16, § 21; 1995, June 30, P.L. 220, No. 26 § 11, imd. effective; 1996, July 11, P.L. 633, No. 107, § 10, imd. effective; 1997 June 25, P.L. 297, No. 30, § 14, effective July 1, 1997; 1998, April 27, P.L. 270, No. 46, § 19, effective July 1, 1998.

§ 25-2509.3. Payments on account of transportation of nonpublic school Pupils

Each school district, regardless of classification, shall be paid by the Commonwealth the sum of thirty-five dollars ($35) for each nonpublic school pupil transported in the school year 1978-1979 through the school year 1983-1984. For the school year 1984-1985 through the school year 1989-1990, each school district shall be paid the sum of seventy dollars ($70) for each nonpublic school pupil transported. For the school years 1990-1991 and 1991-1992, each school district shall be paid the sum of one hundred twenty-four dollars ($124) for each nonpublic school pupil transported. For the school year 1992-1993 and the 1993-1994 school year, each school district shall be paid the sum of one hundred fifty-nine dollars ($159) for each nonpublic school pupil transported. For the school year 1994-1995 through the school year 1996-1997, each school district shall be paid the sum of two hundred dollars ($200) for each nonpublic school pupil transported. For the school year 1997-1998 and each school year thereafter, each school district shall be paid the sum of two hundred eighty-five dollars ($285) for each nonpublic school pupil transported.

Amended 1992, July 9, P.L. 392, No. 85, § 4, imd. effective; 1992, July 9, P.L. 403, No. 88, § 3, imd. effective; 1995, June 30, P.L. 220, No. 26, § 12, imd. effective; 1998, April 27, P.L. 270, No. 46, § 20, effective July 1, 1998.

§ 25-2509.5. Special education payments to school districts

(a) This section applies to Commonwealth payments to school districts for the support of programs and services for exceptional children.

(b) During the 1991-1992 school year, each school district shall be paid:

(1) an amount to be determined by multiplying five hundred twenty-five dollars ($525) by seventeen percent (17%) of its average daily membership; and

(2) an amount to be determined by multiplying seven thousand dollars ($7,000) by one percent (1%) of its average daily membership .

(c) Payments to school districts pursuant to this section and any additional payments pursuant to sections 2509.6 and 2509.7[1] shall consist of an amount payable in six (6) installments as follows: in July, fifteen percent (15%) of the estimated amount due; in September, fifteen percent (15%) of the estimated amount due; in November, fifteen percent (15%) of the estimated amount due; in January, fifteen percent (15%) of the estimated amount due; in March, fifteen percent (15%) of the estimated amount due; and in June, the balance due, determined by subtracting the payments made during July, September, November, January and March from the special education payment earned by the school district.

(d) During the 1992-1993 school year, each school district shall be paid:

(1) an amount to be determined by multiplying one thousand dollars ($1,000) by fifteen percent (15%) of its average daily membership; and

(2) an amount to be determined by multiplying eleven thousand five hundred forty dollars ($11,540) by one percent (1%) of its average daily membership.

(e) During the 1993-1994 school year, each school district shall be paid:

(1) an amount to be determined by multiplying one thousand twenty-five dollars ($1,025) by fifteen percent (15%) of its average daily membership; and

(2) an amount to be determined by multiplying twelve thousand dollars ($12,000) by one percent (1%) of its average daily membership.

(f) The Secretary of Education shall develop a definition of severely classified exceptional students by September 20, 1996. This definition may include the primary exceptionality,

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1. 24 P.S. §§ 25-2509.6 and 25-2509.7.

level of intervention, type of support and related services requirements elements currently collected through the PennData system. This definition shall not include students who are institutionalized, in approved private school placements, in detention home programs, in mentally gifted programs or in early intervention programs operated under the provisions of the act of December 19, 1990 (P.L. 1372, No. 212),[2] known as the "Early Intervention Services System Act." This definition shall be submitted to the majority chairman and the minority chairman of the Appropriations Committee and the Education Committee of the Senate and the majority chairman and the minority chairman of the Appropriations Committee and the Education Committee of the House of Representatives for review and comment no later than September 20, 1996. No sooner than fifteen (15) days and not later than thirty (30) days after submission of the proposed definition to the committees, the Secretary of Education shall approve a definition of severely classified exceptional students.

(g) The Secretary of Education shall modify the PennData system to collect for each school district an average daily membership count of those exceptional students classified as severe. The Secretary or Education shall use the approved definition of severely classified exceptional students in the development of the PennData report "Representation of Students with Severe Disabilities in Special Education." The Secretary of Education shall provide the 1994-1995 PennData report "Representation of Students with Severe Disabilities in Special Education" detailing the average daily membership by category of exceptionality for each school district for the 1994-1995 academic year to the majority chairman and the minority chairman of the Appropriations Committee and the Education Committee of the Senate and the majority chairman and the minority chairman of the Appropriations Committee and the Education Committee of the House of Representatives by February 1, 1997, and shall annually thereafter provide the PennData report "Representation of Students with Severe Disabilities in Special Education" detailing

2. 11 P.S. § 875-101 et seq.

the average daily membership by category of exceptionality for each school district for the current school year to the committees by the first day of February of each year.

(h) During the 1994-1995 school year, each school district shall be paid:

(1) an amount to be determined by multiplying fifteen percent (15%) of its school age average daily membership by one thousand thirty-five dollars ($1,035); and

(2) an amount to be determined by multiplying one percent (1%) of its school age average daily membership by twelve thousand five hundred dollars ($12,500).

(i) During the 1995-1996 school year, each school district shall be paid:

(1) an amount to be determined by multiplying fifteen percent (15%) of its school age average daily membership by one thousand forty dollars ($1,040); and

(2) an amount to be determined by multiplying one percent (1%) of its school age average daily membership by thirteen thousand dollars ($13,000).

(j)(1) During the 1994-1995 school year, up to ten million five hundred thousand dollars ($10,500,000) of the funds appropriated to the Department of Education for special education shall provide supplemental funding for special education to school districts which operate special education programs and whose net special education expenditure rate exceeds one hundred fifty percent (150%) of the Statewide special education expenditure rate with the special education expenditure rate being determined by dividing net special education expenditures by total education expenditures as determined by the Secretary of Education. Such payments shall be in an amount to be determined by the Secretary of Education and shall be made pursuant to the payment schedule established in subsection (c).

(2) During the 1995-1996 school year, up to five million two hundred fifty thousand dollars ($5,250,000) of the funds appropriated to the Department of Education for special education shall provide supplemental funding pursuant to this subsection as determined by the Secretary of Education. Such payments shall be in an amount equal to fifty percent (50%) of

the amounts paid to districts eligible under clause (1) during the 1994-1995 school year and shall be made pursuant to the payment schedule established in subsection (c).

(3) During the 1996-1997 school year, up to two million six hundred twenty-five thousand dollars ($2,625,000) of the funds appropriated to the Department of Education for special education shall provide supplemental funding pursuant to this subsection as determined by the Secretary of Education. Such payments shall be in an amount equal to twenty-five percent (25%) of the amounts paid to districts eligible under this subsection during the 1994-1995 school year and shall be made pursuant to the payment schedule established in subsection (c).

(k) During the 1996-1997 school year, each school district shall be paid:

(1) an amount to be determined by multiplying fifteen percent (15%) of its school-age average daily membership by one thousand one hundred fifteen dollars ($1,115); and

(2) an amount to be determined by multiplying one percent (1%) of its school-age average daily membership by thirteen thousand one hundred twenty-five dollars ($13,125).

No district shall, however, receive less than the amount received during the 1995-1996 school year under subsection (i).

(l) During the 1997-1998 school year, each school district shall be paid:

(1) an amount to be determined by multiplying fifteen percent (15%) of its school-age average daily membership by one thousand one hundred fifty dollars ($1,150); and

(2) an amount to be determined by multiplying one percent (1%) of its school-age average daily membership by thirteen thousand four hundred fifty dollars ($13,450).

(m) During the 1997-1998 school year, up to ten million one hundred seven thousand dollars ($10,107,000) of the funds appropriated to the Department of Education for special education shall be available to provide supplemental funding for special education to school districts which operate special education programs. Only school districts that qualify under the

provisions of subsection (n) will be eligible to receive this supplemental special education funding.

(n) School districts will qualify for supplemental payments under subsection (m) if:

(1)(i) the school district's special education expenditures for the 1994-1995 school year, as a percentage of the sum of the school district's 1994-1995 school year expenditures for regular education, vocational-technical education and special education, are equal to or greater than the special education expenditures of all school districts for the 1994-1995 school year, as a percentage of the sum of the 1994-1995 school year expenditures of all school districts for regular education, vocational-technical education and special education; and

(ii) the school district's market value/income aid ratio for the 1996-1997 school year is equal to or greater than .6000; and

(iii) the school district's equalized millage for the 1994-1995 school year is equal to or greater than 21.0; or

(2) The school district satisfies the criterion set forth in clause (1)(i), does not satisfy the criterion set forth in clause (1)(ii) but the school district's equalized millage for the 1994-1995 school year is equal to or greater than 25.2; or

(3) The school district does not satisfy the criteria of clause (1) or (2) but does satisfy the following:

(i) the number of children in low-income families in 1995 is equal to or greater than fifteen percent (15%) of the school district's 1995-1996 school year average daily membership; and

(ii) the school district's market value/income aid ratio for the 1996-1997 school year is equal to or greater than .7000.

(o) Qualifying school districts will receive an additional twenty percent (20%) of the amount calculated at subsection (l)(1). This amount shall be paid pursuant to the payment schedule established in subsection (c).

During the 1997-1998 school year, however, no school district shall receive less payment under subsections (l) and (m) than the amount of the payments the school district received during the 1996-1997 school year under subsections (j)(3) and (k).

(p) During the 1998-1999 school year, each school district shall be paid:

(1) an amount to be determined by multiplying fifteen percent (15%) of its school-age average daily membership by one thousand two hundred sixty dollars ($1,260); and

(2) an amount to be determined by multiplying one percent (1%) of its school-age average daily membership by thirteen thousand nine hundred fifty-five dollars ($13,955).

(q) During the 1998-1999 school year, a portion of the funds appropriated to the Department of Education for special education shall be available to provide supplemental funding for special education to school districts which operate special education programs. Only school districts that qualify under the provisions of subsection (r) will be eligible to receive this supplemental special education funding.

(r) School districts will qualify for supplemental payments under subsection (q) if:

(1)(i) the school district's special education expenditures for the 1995-1996 school year as a percentage of the sum of the school district's 1995-1996 school year expenditures for regular education, vocational-technical education and special education is equal to or greater than the special education expenditures of all school districts for the 1995-1996 school year as a percentage of the sum of the 1995-1996 school year expenditures of all school districts for regular education, vocational-technical education and special education; and

(ii) the school district's market value/income aid ratio for the 1997-1998 school year is equal to or greater than six thousand ten-thousandths (0.6000); and

(iii) the school district's equalized millage for the 1995-1996 school year is equal to or greater than twenty-one (21); or

(2) The school district satisfies the criterion set forth in clause (r)(1)(i), does not satisfy the criterion set forth in clause (r)(1)(ii) but the school district's equalized millage for the 1995-1996 school year is equal to or greater than twenty-five (25); or

(3) The school district does not satisfy the criteria of clause (r)(1) or (2) but does satisfy the following:

(i) the number of school-age children in low-income families as defined in section 2501(21)[3] for calendar year 1996 is equal to or greater than thirteen percent (13%) of the school district's 1996-1997 school year average daily membership; and

(ii) the school district's market value/income aid ratio for the 1997-1998 school year is equal to or greater than five thousand five hundred ten thousandths (0.5500).

(s) Qualifying school districts will receive an additional twenty percent (20%) of the amount calculated at subsection (p)(1). This amount shall be paid pursuant to the payment schedule established in subsection (c). During the 1998-1999 school year, however, no school district shall receive less payment under subsections (p) and (r) than the amount of the payments the school district received during the 1997-1998 school year under subsections (l) and (m).

(t) Additionally, during the 1998-1999 school year, each school district of the first class or first class A belonging to an intermediate unit the boundary of which is coterminous with that of the school district shall receive a proportionate share of ten million three hundred thousand dollars ($10,300,000) based on the amount received by its coterminous intermediate unit for the cost of operating and administering classes or schools for students with exceptionalities as approved by the Department of Education for the 1990-1991 school year. This amount will be added to the school district's payment under subsection (q). Provided, however, that during the 1998-1999 school year, no school district of the first class or first class A will receive less payment under this subsection and subsection (q) than the amount of the payments the school district's coterminous intermediate unit received during the 1997-1998 school year under section 2509. 1(d)(3).[4]

Amended 1992, July 9, P.L. 392, No. 85, § 5, effective in 60 days; 1993, June 7, P.L. 49, No. 16, § 22, imd. effective; 1995, June 30, P.L. 220, No. 26, § 13, imd. effective; 1996, July 11, P.L. 633, No. 107, § 11, imd. effective; 1997, June 25, P.L. 297,

3. 24 P.S. § 25-2501(21).

4. 24 P.S. § 25-2509.1(d)(3).

No. 30, § 15, effective July 1, 1997; 1998, April 27, P.L. 270, No. 46, § 21, effective July 1, 1998.

§ 8329. Payments on account of social security deductions from appropriations

(a) Payments by Commonwealth.—Where the Secretary of Education enters into an agreement with the Commonwealth to place under the Federal Social Security Act members who have elected coverage, the Commonwealth shall pay to the employers one-half of the contributions payable under the employer's tax established by the Social Security Act (Public Law 74-271, 42 U.S.C. § 301 et seq.) on all covered wages which are not federally funded, except that after June 30, 1995, the Commonwealth shall pay to an employer that is a school entity an amount as follows:

(1) For all employees whose effective dates of employment with their employing school entities are after June 30, 1994, and who also had not previously been employed by any school entity within this Commonwealth, the Commonwealth shall pay each school entity an amount equal to the total contributions payable under the employer's tax established by the Social Security Act on all covered wages which are not federally funded, multiplied by the market value/income aid ratio of the school entity. For no school year shall any school entity receive less than the amount that would result if the market value/income aid ratio as defined in section 2501(14.1) of the Public School Code of 1949 was 0.50.

(2) For all employees who are not described in paragraph (1), the Commonwealth shall pay each school entity one-half of the contributions payable under the employer's tax established by the Social Security Act on all covered wages which are not federally funded.

(b) Deduction from appropriations.—The Secretary of Education and the State Treasurer are hereby authorized to cause to be deducted and paid into or retained in the State Treasury from any moneys due to any employer on account of appropriations for schools or other purposes the amounts payable under the provisions of this section.

Amended 1994, April 29, P.L. 159, No. 29, § 4, effective July 1, 1995.

§ 8535. Payments to school entities by Commonwealth

For each school year beginning with the 1995-1996 school year, each school entity shall be paid by the Commonwealth for contributions based upon school service of active members of the system after June 30, 1995, as follows:

(1) The Commonwealth shall pay each school entity for contributions made to the Public School Employees' Retirement Fund based upon school service of all active members, including members on activated military service leave, whose effective dates of employment with their school entities are after June 30, 1994, and who also had not previously been employed by any school entity within this Commonwealth an amount equal to the amount certified by the Public School Employees' Retirement Board as necessary to provide, together with the members' contributions, reserves on account of prospective annuities, supplemental annuities and the premium assistance program as provided in this part in accordance with section 8328 (relating to actuarial cost method), multiplied by the market value/income aid ratio of the school entity. For no school year shall any school entity receive less than the amount that would result if the market value/income aid ratio as defined in section 2501(14.1)[1] of the Public School Code of 1949 was 0.50.

(2) The Commonwealth shall pay each school entity for contributions made to the Public School Employees' Retirement Fund based upon school service of all active members, including members on activated military service leave, who are not described in paragraph (1), one-half of the amount certified by the Public School Employees' Retirement Board as necessary to provide, together with the members' contributions, reserves on account of prospective annuities, supplemental annuities and the premium assistance program as provided in this part in accordance with section 8328.

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1. 24 P.S. § 25-2501(14.1).

(3) School entities shall have up to five days after receipt of the Commonwealth's portion of the employer's liability to make payment to the Public School Employees' Retirement Fund.

1994, April 29, P.L. 159, No. 29, § 7, effective July 1, 1995.

APPENDIX F

TITLE 351. PHILADELPHIA HOME RULE CHARTER
ARTICLE XII. PUBLIC EDUCATION
CHAPTER 1. THE HOME RULE SCHOOL DISTRICT
351 Pa. Code § 12.12-100 (1999)

§ 12.12-100. The Home Rule School District

A separate and independent home rule school district is hereby established and created to be known as "The School District of Philadelphia."

NOTES:

Notes of Decisions

Unlawful Conditions

The Commonwealth and Governor and the City and Mayor should be joined in the remedial phase of this proceeding to determine their liability, if any, to pay additional costs necessary to remedy the unlawful conditions found to exist in the Philadelphia public schools. *Human Relations Commission v. School District of Philadelphia*, 667 A.2d 1173 (Pa. Cmwlth. 1995).

APPENDIX G
CHAPTER 19-1800. SCHOOL TAX AUTHORIZATION[229]

19-1801. Authorization of Tax.

(1) The Board of Education of The School District of Philadelphia is authorized to impose a tax for school district purposes on real estate within the City of Philadelphia for the year:[230]

(a) 1964	(m) 1976	(y) 1988
(b) 1965	(n) 1977	(z) 1989
(c) 1966	(o) 1978	(aa) 1990
(d) 1967	(p) 1979	(bb) 1991
(e) 1968	(q) 1980	(cc) 1992
(f) 1969	(r) 1981	(dd) 1993
(g) 1970	(s) 1982	(ee) 1994
(h) 1971	(t) 1983	(ff) 1995
(i) 1972	(u) 1984	(gg) 1996
(j) 1973	(v) 1985	(hh) 1997
(k) 1974	(w) 1986	(ii) 1998
(l) 1975	(x) 1987	(jj) 1999 and thereafter

(2) The tax imposed by the Board of Public Education of the School District of Philadelphia shall be at the rate of

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229. Added, 1963 Ordinances, p. 1298.

230. Amended, 1964 Ordinances, p. 1223; amended, 1965 Ordinances, p. 1623; amended, 1966 Ordinances, p. 576; amended, 1967 Ordinances, p. 647; amended, 1968 Ordinances, p. 1558; amended, 1969 Ordinances, pp. 356 and 1079; amended, 1970 Ordinances, p. 742; amended, 1971 Ordinances, p. 798; amended, 1972 Ordinances, p. 405; amended, 1973 Ordinances, p. 509; amended, 1974 Ordinances, p. 550; amended, 1975 Ordinances, p. 477; amended, 1976 Ordinances, p. 546; amended, 1977 Ordinances, p. 587; amended, 1978 Ordinances, p. 803; amended, 1979 Ordinances, p. 917; amended, 1980 Ordinances, p. 491; amended, 1981 Ordinances, p. 873; amended, 1983 Ordinances, p. 1295; amended, 1983 Ordinances, p. 1077; amended, 1984 Ordinances, p. 621; amended, Bill No. 538 (approved June 5, 1985); amended, 1989 Ordinances, p. 764 (Bill No. 436). Section 2 of Bill No. 436 includes certain effective date provisions in the event of litigation. Amended, 1990 Ordinances, p. 622; amended, 1991 Ordinances, p. 431; amended, 1992 Ordinances, p. 545; amended, 1993 Ordinances, p. 628; amended, 1994 Ordinances, p. 800; amended, Bill No. 1050 (approved June 2, 1995); amended, Bill No. 47 (approved June 19, 1996); amended, Bill No. 970131 (approved April 3, 1997).

twelve and one-half (12½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made:[231]

(a) in the year 1963 for the imposition of tax for the year 1964; and

(b) in the year 1964 for the imposition of tax for the year 1965.

(3) The tax imposed by the Board of Public Education of the School District of Philadelphia shall be at the rate of forty-two and one-half (42½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1965 for the imposition of tax for the year 1966.[232]

(4) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of forty-two and one-half (42½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1966 for the imposition of tax for the year 1967.[233]

(5) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of forty-two and one-half (42½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1967 for imposition of tax for the year 1968.[234]

(6) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of forty-two and one-half (42½) cents of each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1968 for imposition of tax for the year 1969.[235]

(7) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of forty-two and one-half (42½) cents on each one hundred (100) dollars of

231. Amended, 1964 Ordinances, p. 1223.
232. Added, 1965 Ordinances, p. 1623.
233. Added, 1966 Ordinances, p. 576.
234. Added, 1967 Ordinances, p. 647.
235. Added, 1968 Ordinances, p. 1558.

assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1969 for imposition of tax for the year 1970.[236]

(8) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of one (1) dollar and twelve and one-half (12½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1975 for the imposition of tax for the year 1976.[237]

(9) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of one (1) dollar and twenty-two and one-half (22½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1976 for the imposition of tax for the year 1977.[238]

(10) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of one (1) dollar and twenty-two and one-half (22½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1977 for the imposition of tax for the year 1978.[239]

(11) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of one (1) dollar and twenty-two and one-half (22½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1978 for the imposition of tax for the year 1979.[240]

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236. Added, 1969 Ordinances, p. 1079.

237. Added, 1970 Ordinances, p. 742; amended, 1971 Ordinances, p. 798; amended, 1972 Ordinances, p. 405; amended, 1973 Ordinances, p. 509; amended, 1974 Ordinances, p. 550; amended, 1975 Ordinances, p. 477.

238. Added, 1976 Ordinances, p. 546.

239. Added, 1977 Ordinances, p. 387.

240. Added, 1978 Ordinances, p. 803.

(12) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of one (1) dollar and twenty-two and one-half (22½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1979 for the imposition of tax for the year 1980.[241]

(13) The tax imposed by the Board of Education of The School District of Philadelphia shall be at the rate of one (1) dollar and sixty (60) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1981 for the imposition of tax for the year 1982.[242]

(14) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of one (1) dollar and sixty (60) cents on each one hundred (100) dollars of assessed value of taxable real property as retuned by the Board of Revision of Taxes as the assessment made in the year 1982 for the imposition of tax for the year 1983.[243]

(15) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of one (1) dollar and ninety (90) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1983 for the imposition of tax for the year 1984.[244]

(16) The tax imposed by the Board of Education of The School District of Philadelphia shall be at the rate of two ($2.00) dollars and twenty-nine and one-half ($.295) cents on each one hundred ($100.00) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1985 for the imposition of tax for the year 1986.[245]

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241. Added, 1979 Ordinances, p. 917.

242. Added, 1980 Ordinances, p. 491; amended, 1981 Ordinances, p. 873.

243. Added, 1982 Ordinances, p. 1295.

244. Added, 1983 Ordinances, p. 1077.

245. Added, 1985 Ordinances, p. 538.

(17) The tax imposed by the Board of Education of The School District of Philadelphia shall be at the rate of two (2) dollars and twenty-nine and one-half (29½) cents on each one hundred ($100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1984 for the imposition of tax for the year 1985; provided, that, if the Commonwealth of Pennsylvania fails to provide legislation enabling City Council to enact Bill No. 131, introduced April 26, 1984, providing for the imposition of Business Privilege Taxes for Fiscal Year 1985, or if City Council fails to adopt Bill No. 131 for Fiscal Year 1985, the rate of tax shall be two (2) dollars and four and one-half (4½) cents for the year 1985.[246]

(18) The tax imposed by the Board of Education of The School District of Philadelphia shall be at the rate of two (2) dollars and twenty-nine and one-half (29½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1986 for the imposition of tax for the year 1987.[247]

(19) The tax imposed by the Board of Education of The School District of Philadelphia shall be at the rate of two (2) dollars and twenty-nine and one-half (29½) cents on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1987 for the imposition of tax for the year 1988.[248]

(20) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars forty-four and one-half cents; ($2.44½) on each one hundred ($100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1988 for the imposition of tax for the year 1989. Provided that, in the event that a court of competent jurisdiction enters a final order from which all appeals

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246. Added, 1984 Ordinances, p. 621. Referenced Bill No. 131 was adopted, 1987 Ordinances, p. 601 (adding Chapter 19-2600)

247. Added, 1988 Ordinances, p. 326.

248. Added, 1988 Ordinances, p. 326.

have been exhausted, determining that City Council lacked the authority to impose this rate effective July 1, 1988 for the year 1989, the rate shall revert to two dollars twenty-nine and one-half cents ($2.29½) on each one hundred ($100) dollars of taxable real property for the year 1989.[249]

(21) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars forty-four and one-half cents. ($2.44½) on each one hundred ($100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1989 for the imposition of tax for the year 1990.[250]

(22) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars eighty-four and four-tenths cents ($2.844) on each one hundred ($100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1990 for the imposition of tax for the year 1991.[251]

(23) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars eighty-four and four-tenths cents ($2.844) on each one hundred ($100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1991 for the imposition of tax for the year 1992.[252]

(24) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars and eighty-four and four-tenths cents ($2.844) on each one hundred ($100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1992 for the imposition of tax for the year 1993.[253]

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249. Amended, 1989 Ordinances, p. 764.
250. Added, 1989 Ordinances, p. 764.
251. Added, 1990 Ordinances, p. 622.
252. Added, 1991 Ordinances, p. 431.
253. Added, 1992 Ordinances, p. 545.

(25) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars eighty-four and four-tenths cents ($2.844) on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1993 for the imposition of tax for the year 1994.[254]

(26) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars and eighty-four and four-tenths cents ($2.844) on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1994 for the imposition of tax for the year 1995.[255]

(27) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars and eighty-four and four-tenths cents ($2.844) on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1995 for the imposition of tax for the year 1996.[256]

(28) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars and eighty-four and four-tenths cents ($2.844) on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1996 for the imposition of tax for the year 1997.[257]

(29) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars and eighty-four and four-tenths cents ($2.844) on each one hundred (100) dollars of assessed value of taxable real prop-

254. Added, 1993 Ordinances, p. 628.
255. Added, 1994 Ordinances, p. 800.
256. Added, Bill No. 1050 (approved June 2, 1995).
257. Added, Bill No. 47 (approved June 19, 1996).

erty as returned by the Board of Revision of Taxes as the assessment made in the year 1997 for the imposition of tax for the year 1998.[258]

(30) The tax imposed by the Board of Education of the School District of Philadelphia shall be at the rate of two dollars and eighty-four and four-tenths cents ($2.84^4/_{10}$) on each one hundred (100) dollars of assessed value of taxable real property as returned by the Board of Revision of Taxes as the assessment made in the year 1998 for the imposition of tax for the year 1999.[259]

§19-1804. Authorization of Net Income Tax.[260]

(1) The following words shall be construed in this Section to have the following meanings, except where the context clearly indicates otherwise:

(a) "Board" means the Board of Education of the School District of Philadelphia.

(b) "Collector" means the Commissioner of School Revenue of the School District of Philadelphia.

(c) "Net Income" shall be determined after provision of all allocable and reasonable costs and expenses paid in the production of income, but no provision shall be made in this determination for any taxes.

(d) "Person" means any individual other than a corporation who is beneficially entitled to income.

(e) "Tax Year" means the 12-month period from January 1 to December 31, 1969 for the purposes of the tax imposed for Fiscal Year 1970.

(e.1) "Tax Year" means the 12-month period from January 1 to December 31.[261]

(2) *Imposition of the Tax.*

(a) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1970 for general school purposes, on every person who is a resident of

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258. Added, Bill No. 970131 (approved April 3, 1997).

259. Added, Bill No. 970131 (approved April 3, 1997).

260. Added, 1969 Ordinances, p. 1082; amended, 1980 Ordinances, p. 12.

261. Added, 1970 Ordinances, p. 740.

the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to such person, including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate and of which such person is the substantial owner, at the rate of two (2) percent.

(a.1) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1971 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1970 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of two (2) percent.[262]

(a.2) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1972 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1971 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of two (2) percent.[263]

(a.3) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1973 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease,

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262. Added, 1970 Ordinances, p. 740.
263. Added, 1971 Ordinances, p. 797.

sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1972 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of two (2) percent.[264]

(a.4) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1974 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1973 person who is a resident of the School District of including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of two (2) percent.[265]

(a.5) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1975 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1974 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of two (2) percent.[266](a.6) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1976 for general school purposes, on every person who is a resident of the School District

264. Added, 1972 Ordinances, p. 406.
265. Added, 1973 Ordinances, p. 511.
266. Added, 1974 Ordinances, p. 547.

of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1975 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of two (2) percent.[267]

(a.7) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1977 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1976 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and five-sixteenths (4 5/16) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[268]

(a.8) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1978 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1977 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and five-sixteenths (4 5/16) percent, provided that,

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267. Added, 1975 Ordinances, p. 478.
268. Added, 1976 Ordinances, p. 547.

in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordiance to impose such tax at the maximum permissible rate.[269]

(a.9) Except as excluded in subsection (3), the Board is authorized to impose a tax for Fiscal Year 1979 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible personal property, received or credited to said person during the tax year 1978 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and five-sixteenths (4 5/16) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax as the maximum permissible rate.[270]

(a.10) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1980 for general school purposes, on every person who is a resident of The School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1979 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and five-sixteenths (4 5/16) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this Chapter to impose such tax at the maximum permissible rate.[271]

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269. Added, 1977 Ordinances, p. 388.
270. Added, 1978 Ordinances p. 804.
271. Added, 1979 Ordinances, p. 918.

(a.11) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1981 for general school purposes, on every person who is a resident of The School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1980 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and five-sixteenths (4 5/16) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[272]

(a.12) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1982 for general school purposes, on every person who is a resident of The School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1981 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and five-sixteenths (4 5/16) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[273]

(a.13) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1983 for general school purposes, on every person who is a resident of The School District of Philadel-

272. Added, 1980 Ordinances, p. 493.

273. Added, 1981 Ordinances, p. 874.

phia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1982 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and five-sixteenths (4 5/16) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[274]

(a.14) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1984 for general school purposes, on every person who is a resident of The School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1983 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[275]

(a.15) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1985 for general school purposes, on every person who is a resident of The School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or cred-

274. Added, 1982 Ordinances, p. 1296.
275. Added, 1983 Ordinances, p. 1088.

ited to said person during the tax year 1984 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six hundredths (4.96%) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by state, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[276]

(a.16) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1986 for general school purposes, on every person who is a resident of The School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1985 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[277]

(a.17) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1987 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property received or credited to said person during the tax year 1986 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such

276. Added, 1984 Ordinances, p. 596.

277. Added, Bill No. 539 (approved June 5, 1985).

person is the substantial owner at the rate of four and ninety-six one-hundredths (4.96%) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[278]

(a.18) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1988 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1987 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths (4.96%) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[279]

(a.19) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1989 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1988 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of

278. Added, 1986 Ordinances, p. 301.

279. Added, 1987 Ordinances, p. 625. Enrolled bill numbered subsection as "(a.19)" in error.

four and ninety-six one-hundredths (4.96%) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[280]

(a.20) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1990 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1989, including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths (4.96%) percent, provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this ordinance to impose such tax at the maximum permissible rate.[281]

(a.21) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1991 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1990 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%), provided that, in the event the rate of any tax

280. Added, 1988 Ordinances, p. 367.

281. Added, 1989 Ordinances, 786.

imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[282]

(a.22) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1992 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1991 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[283]

(a.23) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1993 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1992 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[284]

282. Added, 1990 Ordinances, p. 628.
283. Added, 1991 Ordinances, p. 432.
284. Added, 1992 Ordinances, p. 547.

(a.24) Except as excluded in subsection 3 the Board is authorized to impose a tax for Fiscal Year 1994 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income tax from the ownership, lease, sale or other disposition of real property and tangible and intangible personal including the net income tax paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%) provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by stature, it is the intent of this subsection to impose such tax at the maximum permissible rate.[285]

(a.25) Except as excluded in subsection 3, the Board[286] is authorized to impose a tax for Fiscal Year 1995 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1994 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[287]

(a.26) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year

285. Added, 1993 Ordinances, p. 629.

286. Enrolled bill read ". . .subsection 3 of the Board. . ." 1994 Ordinances, p. 801.

287. Added, 1994 Ordinances, p. 801.

1996 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1995 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and ninety-six one-hundredths percent (4.96%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[288]

(a.27) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1997 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1996 including the net income of any trust or estate of which such person is the substantial owner at the rate of four and eighty-four one-hundredths percent (4.84%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[289]

(a.28) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1998 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease,

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288. Added, Bill No. 1051 (approved June 2, 1995).

289. Added, Bill No. 48 (approved June 18, 1996).

sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1997 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and seventy-nine one-hundredths percent (4.79%), provided that, in the event the rate of any tax imposed hereunder is determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[290]

(a.29) Except as excluded in subsection 3, the Board is authorized to impose a tax for Fiscal Year 1999 for general school purposes, on every person who is a resident of the School District of Philadelphia on the net income from the ownership, lease, sale or other disposition of real property and tangible and intangible personal property, received or credited to said person during the tax year 1998 including the net income paid to any beneficiary of a trust or estate and the income of any trust or estate of which such person is the substantial owner at the rate of four and seven hundred and fifteen one thousandths percent (4.715 %), provided that, in event the rate of any tax imposed hereunder determined to exceed any limitation imposed by statute, it is the intent of this subsection to impose such tax at the maximum permissible rate.[291]

(b) A person who was or is a resident of the School District of Philadelphia for a period less than a full tax year shall be liable for the tax on income received or credited to him during such period.

(3) *Exclusions.* There shall be excluded from the tax imposed by this Section the following income:

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290. Added, Bill No. 970132 (approved April 3, 1997).

291. Added, Bill No. 970132 (approved April 3, 1997).

(a) All interest on public loans issued by this Commonwealth or the United States, and public loans and obligations of any county, city, borough, town, township, school district, and incorporated district of this Commonwealth, and bonds and obligations of bodies corporate and public of this Commonwealth known as municipal authorities.

(b) Interest and dividends received or credited on savings deposits and savings certificates issued by any private bank, building and loan association, savings and loan association, credit union, savings bank, bank and trust company, or trust company. For purposes of this paragraph a savings certificate means an instrument designated as a savings certificate or a savings bond and which either according to the rules of the issuer in effect at the time the instrument is issued or when this act is approved, whichever is later, can only be originally issued to an individual or a non-profit organization, or is non-negotiable.

(c) Gains realized upon the sale, exchange or other disposition of tangible or intangible personal property or of real estate; provided, that the property which produced such gains has been owned by the resident for a period of more than six months prior to the date of sale, exchange or other disposition.

(d) Income from carrying on or exercising for profit of any trade, business, profession or enterprise which is subject to the Net Profits Tax or Wage Tax (Philadelphia Code Chapter 19-1500 et seq.).

(e) Old age, retirement and pension payments.

(f) Sick pay and disability benefits.

(g) Benefits arising under the Workmen's Compensation Act and Unemployment Compensation Act.

(h) Active military service pay.

(i) Bonuses paid by any governmental unit for active military service.

(j) Death benefits.

(k) Proceeds from insurance policies.

(l) Gifts and bequests.

(m) Compensatory damages arising from any claim or cause of action.

(4) *Returns and Payment of Tax.*

(a) The tax as imposed by this Section and levied by the Board shall be due and payable by April 15 of the fiscal year for which the tax is imposed.[292]

§ 19-1805. Authorization of Liquor Sales Tax.[293]

(1) *Definitions.* In this Section the following definitions shall apply:

(a) *Commissioner.* The Revenue Commissioner.

(b) *Person.* Any individual, limited partnership, partnership, association or corporation. Whenever used in a clause prescribing or imposing a fine or imprisonment or both, the term "person" as applied to "limited partnership" or "partnership" shall mean such individual or individuals who, under the bylaws of such clubs, shall have jurisdiction over the possession and sale of liquor therein.

(c) *Purchaser.* A person who acquires liquor or malt and brewed beverages through sale at retail.

(d) *Sale.* Any transfer at retail for consideration in any manner or by any means whatsoever of liquor and malt and brewed beverages, but the term shall not include any transaction which is subject to tax by the Commonwealth of Pennsylvania under the Tax Reform Code of 1971.

(e) *Tax Year.* The fiscal year of the school district commencing July first of any calendar year and ending June 30 of the following calendar year.

(f) *Vendor.* Any person maintaining a place of business in the School District of Philadelphia and licensed by the Commonwealth of Pennsylvania to sell or dispense liquor or malt and brewed beverages, the sale of which is

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292. Amended, 1970 Ordinances, p. 740; amended, 1975 Ordinances, p. 1571.

293. Former § 19-1805 repealed and this section added, 1994 Ordinances, p. 791. Section 4 of the Ordinance provides that it is to take effect January 1, 1995.

subject to the tax authorized by this section, but not including an employee who in the ordinary scope of employment renders services to his employer in exchange for wages or salaries.

(2) *Imposition of the Tax.* The Board of Education of the School District of Philadelphia is authorized to impose a tax for general public school purposes upon sales at retail in the District of liquor and malt and brewed beverages which are sold or dispensed during Tax Year 1994, or any part thereof, and for each tax year thereafter, by any hotel, restaurant, or club, or other person licensed by the Commonwealth of Pennsylvania to sell or dispense liquor or malt or brewed beverages. The rate of the tax to be fixed by the Board of Education for Tax Year 1993, and for each tax year thereafter, shall be levied at the rate of ten percent (10%) of the sale price.

(3) *Collection of the Tax.*

(a) Every vendor shall collect the tax as agent for the Board of Education of the School District of Philadelphia from the purchaser at the time of making the sale and shall remit the tax to the Commissioner.

(b) Any vendor required under this section to collect tax from another person, who shall fail to collect the proper amount of tax, shall be liable for the full amount of the tax which he should have collected, and in addition shall be subject to any other remedies at law or in equity.

(4) *Returns and Payments of the Tax.* The vendor who collects the tax authorized under this section shall file a monthly report of taxes collected and pay that amount at the time the return is filed to the Commissioner within twenty-five (25) days after the last day of any month for which the return is filed. Forms for the return shall be provided by the Commissioner. The failure of any vendor to procure or receive any report form shall not excuse him from making a return and paying the taxes collected.

(5) *General Provisions.*

(a) The Commissioner is hereby authorized to examine the books and records of every vendor in order to verify the accuracy of the return and of the payment of the tax authorized by this section. Every vendor is hereby

directed and required to give to the Commissioner or any authorized representative of the Commissioner the means, facilities and opportunities for such examinations.

(b) The Commissioner is hereby charged with the enforcement of the provisions of this section and is hereby authorized to promulgate regulations governing the administration and enforcement of the provisions of this section.

(6) *Review and Appeal.* The Commissioner shall provide a method of appeal from any assessments by the Commissioner, and shall provide for review of petitions of waiver of interest and penalty, compromise and refund of any tax authorized under this section. The methods and procedure for review and appeals shall be the same as those governing reviews and appeals with respect to other local taxes.

(7) *Penalties and Enforcement.*[294] In addition to any other remedy provided by law or in equity:

(a) Any vendor who willfully fails or refuses to appear before the Commissioner in person with his books, records or accounts for examination when required by the Commissioner to do so, or to permit inspection of the books, records or accounts in his custody or control when required by the Commissioner; or who willfully makes any false or untrue statement on his or her return; or who willfully fails or refuses to file a return required by this Section or to collect and pay over to the Revenue Commissioner any tax imposed herein shall be liable to pay a fine of three hundred (300) dollars.

(b) *Repeat Offenders.* Any person who, on more than one occasion, fails to keep or make any record, return or report required by this Section, or keeps or makes any false or fraudulent record, return or report, or who shall refuse the Commissioner or other duly authorized representative of the Commissioner to examine his books and records in order to verify the accuracy of his payment of the tax authorized by this Section, shall be guilty of a

294. Amended, Bill No. 758 (approved July 24, 1995). Enrolled bill erroneously numbered this subsection (8).

separate offense of Repeat Violation, and for each such Repeat Violation, shall be subject to a fine of not more than three hundred (300) dollars, or imprisonment for not more than ninety (90) days, or both. A person shall be guilty of a Repeat Violation regardless whether the second or subsequent violation occurs before or after a judicial finding of a first or previous violation. Each violation, after the first, shall constitute a separate Repeat Violation offense.

(c) Any vendor who fails to pay the taxes collected on or before the last date prescribed for payment shall be liable to pay a penalty of one percent (1%) per month or fraction thereof on such tax from the time the tax became due and interest at the rate of one-half (½) of one (1) percent per month or fraction thereof. The penalties and interest provided for in this section shall be added to the tax assessed and collected at the same time, in the same manner, and as a part of the tax.

The penalty and interest on unpaid taxes imposed by this section shall be paid to the School District of Philadelphia for school purposes.

(d) It shall be the duty of the Commissioner to sue for the recovery of all taxes due hereunder not paid when due. Any suit to recover any tax, together with interest and penalties, authorized hereunder, from any vendor, shall be begun within six (6) years after such tax is due or within six (6) years after a return has been filed, whichever date is later, but this limitation shall not apply:

(i) Where a vendor has failed to file a report required under the provisions of this act.

(ii) Where an examination of a return filed by a vendor and of other evidence relating to such return reveals a fraudulent evasion of taxes, including, but not limited to, substantial understatement of sales at retail taxed hereunder.

Where suit is brought for the recovery of any such tax the vendor shall be liable for, and it shall be the duty of the Commissioner to collect, in addition to the tax assessed against such vendor, the costs of

such collection and the interest and penalties provided hereunder.

§19-1806. Authorization of Realty Use and Occupancy Tax.[295]

(1) *Definitions.* In this section the following definitions shall apply:

(a) *Commissioner.* School Revenue Commissioner.

(b) *Landlord.* Any person who grants the right to use or occupy real estate or any part thereof to any lessee, sub-lessee, licensee or concessionaire, whether or not he is the owner of the real estate.

(c) *Port of Philadelphia.* Piers, wharves and marine terminal facilities entering into or abutting either the Delaware or Schuylkill Rivers which are within the confines of the City of Philadelphia.[296]

(d) *Port Related Activities.* Loading or discharging cargo to or from vessels conducted on piers, wharves or marine terminal facilities in the Port of Philadelphia and activities related thereto such as furnishing dockage, wharfage, truck and/or railroad car loading and unloading and storage of cargo which is to be loaded or has been discharged from vessels at a pier, wharf or marine terminal facility in the Port of Philadelphia.[297]

(e) *Tax Year.* July first of any calendar year through June 30 of the following calendar year.[298]

(f) *Square Feet Available for Use or Occupancy.* The whole portion of any real estate, any structure thereon and space therein exclusive of service, utility and common areas controlled by the landlord or owner thereof.[299]

(2) *Imposition of the Tax.*

(a) The Board of Education of the School District of Philadelphia is authorized to impose a tax for general school purposes on the use or occupancy of real estate within the School District of Philadelphia during the tax

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295. Added, 1970 Ordinances, p. 743; amended, 1980 Ordinances, p. 12.
296. Added, 1982 Ordinances, p. 756.
297. Amended, 1982 Ordinances, p. 756.
298. Amended, 1982 Ordinances, p. 756.
299. Amended, 1982 Ordinance, p. 756.

year beginning July 1, 1988 for the purpose of carrying on any business, trade, occupation, profession, vocation, or any other commercial or industrial activity. This tax is imposed on the user or occupier of real estate.[300]

(b) The Board of Education of the School District of Philadelphia is authorized to impose a tax for general school purposes on the use or occupancy of real estate within the School District of Philadelphia during the tax years beginning July 1, 1997, and July 1, 1998, for the purpose of carrying on any business, trade, occupation, profession, vocation, or any other commercial or industrial activity. This tax is imposed on the user or occupier of real estate.[301]

(3) *Exclusions.*

(a) This authorization shall not include authority to levy a tax on the use or occupancy real estate to the extent that the real estate is used or occupied as the dwelling or principal place residence of the user or occupier or its use or occupancy is subject to by the Commonwealth Pennsylvania under the Tax Act of 1963 for Education.

(b) This authorization shall not authorize this tax to be imposed upon any person exempt from real estate taxes in the City of Philadelphia.

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300. Amended, 1971 Ordinances, p. 800; amended, 1972 Ordinances, p. 401; amended, 1973 Ordinances, p. 513; amended, 1974 Ordinances, p. 549; amended, 1975 Ordinances, p. 481; amended, 1976 Ordinances, p. 550; amended, 1977 Ordinances, p. 392; amended, 1978 Ordinances, p. 808; amended, 1979 Ordinances, p. 923; amended, 1980 Ordinances, p. 497; amended, 1981 Ordinances, p. 879; amended, 1982 Ordinances, p. 1301; amended, 1983 Ordinances, p. 1079; amended, 1984 Ordinances, p. 597; amended, 1985 Ordinances, p. 756; amended, 1986 Ordinances, p. 298; amended, 1988 Ordinances, p. 328.

301. Added, 1989 Ordinawes, p. 783 (Bill No. 442). Section 2 of Bill No. 442 includes certain effective date provisions in the event of litigation. Amended, 1991 Ordinances, p. 434; amended, 1992 Ordinances, p. 548; amended, 1993 Ordinances, p. 631; amended, 1994 Ordinances, p. 803; amended, Bill No. 1052 (approved June 2, 1995); amended, Bill No. 49 (approved June 18, 1996); amended, Bill No. 970133 (approved April 3, 1997).

(c) This authorization shall not include authority to levy a tax on the use or occupancy of facilities used in or occupied by those engaged in Port related activities.[302]

(4) *Rate and Computation of Tax.*[303]

(a) Rate.

(i) The tax authorized by this Section shall be measured by the assessed value of the real estate, for the tax year beginning July 1, 1988, at rate not to exceed three dollars and eighty-five cents ($3.85) per one hundred ($100) dollars of assessed value of the real estate as most recently returned by the Board of Revision of Taxes. In the event that a court of competent jurisdiction enters a final order from which all appeals have been exhausted, determining that City Council lacked the authority to impose this rate effective July 1, 1988, the rate shall revert to three dollars and twenty-five cents ($3.25) per one hundred ($100) dollars of the assessed value of the real estate as most recently returned by the Board of Revision of Taxes.

(ii) The tax authorized by this Section shall be measured by the assessed value of the real estate, for the tax years beginning July 1, 1997, and July 1, 1998, at the rate not to exceed four dollars and sixty-two cents ($4.62) per one hundred (100) dollars of the assessed value of the real estate as most recently returned by the Board of Revision of Taxes.[304]

(b) Computation.

The tax to be paid by the user or occupier shall be computed as follows:

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302. Added, 1982 Ordinances, p. 756.

303. Amended, 1980 Ordinances, p. 497; amended, 1981 Ordinances, p. 879; amended, 1982 Ordinances, p. 1301; amended, 1988 Ordinances, p. 328; amended, 1980 Ordinances, p. 783.

304. Amended, 1991 Ordinances, p. 434; amended, 1992 Ordinance, p. 548; amended, 1993 Ordinances, p. 631; amended, 1994 Ordinances, p. 803; amended, Bill No. 1052 (approved June 2, 1995); amended, Bill No. 49 (approved June 18, 1996); amended, Bill No. 970133 (approved April 3, 1997).

$$\frac{\text{Square feet occupied or used}}{\text{Total square feet available for use of occupancy on the real estate}} \times \text{Assessed value} \times \text{Rate of taxation} \times \frac{\text{Days of actual use of occupancy}}{360}$$

(5) *Collection and Payment of the Tax.*[305]

(a) Each owner of real estate used or occupied solely by such owner, which use or occupancy is subject to the tax under this Section, shall make a return and pay the total tax due to the Commissioner at monthly, quarterly or semi-annual intervals, as the Commissioner shall establish by regulation. In the case of persons required to file returns and pay the tax due at monthly intervals, the returns shall be filed and the tax due shall be paid by the twenty-fifth day of the month for which the tax is due. In the case of persons required to file returns and pay the tax due at quarterly or semi-annual intervals, the returns shall be filed and the tax due shall be paid by the twenty-fifth day of the last month of the quarterly or semi-annual period, as the case may be.

(b) Each landlord or other person authorized to collect rentals on premises, the use or occupancy of which is subject to tax under this Section, shall collect as agent for the School District of Philadelphia, from each user or occupier the proper proportion of the user's or occupier's tax, at monthly, quarterly or semi-annual intervals, as the Commissioner shall establish by regulation and shall make a return and pay the total tax due from such user or occupier together with any tax for which the landlord or other person is liable, to the Commissioner at monthly, quarterly, or semi-annual intervals, as the Commissioner shall establish by regulation. In the case of persons required to file returns and pay the tax due at monthly intervals, the returns shall be filed and the tax due shall be paid by the twenty-fifth day of the month for which the tax is due. In the case of persons required to file returns and pay the tax due at quarterly or semi-annual intervals,

305. Amended, 1985 Ordinances, p 542 (effective for Realty Use and Occupancy Tax due for any period commencing on or after July 1, 1985).

the returns shall be filed and the tax due shall be paid by the twenty-fifth day of the last month of the quarterly or semi-annual period, as the case may be.[306]

The return shall be on forms furnished by the Commissioner. The failure of any person to procure or receive any report form shall not excuse him from making a return and paying the tax due.

Any person required under this Section to collect the tax from a user or occupier, who shall fail to collect the proper amount of such tax, shall be liable for the full amount of the tax which is due from such user or occupier, provided, however, that if the person required by this section to collect the tax shall notify the Commissioner, concurrently with the timely filing of a tax return for the period for which the tax is due, of such information as the Commissioner may require concerning the identity of such user or occupier who has not paid the tax, and the amount of tax not paid for the taxable period by each user or occupier, then said person required to collect the tax shall be excused from said liability.

(c) Any person required by this Section to collect the tax from a user or occupier, who shall remit the tax due by the twenty-fifth day of the month in which the tax is due, shall be entitled to apply against the tax due a discount of one percent (1%), as compensation for the expenses of collecting and remitting the tax and as a consideration for the prompt payment thereof.[307]

(d) The Commissioner shall cause to be publicized, by means most reasonably effective, the names of the forty users or occupiers most grossly in arrears regarding the nonpayment of this tax, on a periodic basis of not less than once each calendar month.[308]

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306. Amended, 1971 Ordinances, p. 1435; amended, 1982 Ordinances, p. 1387; amended, 1983 Ordinances, p. 494.

307. Amended, 1986, Ordinances, p. 872.

308. Added, 1983 Ordinances, p. 494.

APPENDIX H
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

David Powell 6933 N. 15th Street Philadelphia, PA 19126;	)	
Shelean Parks 2426 N. Clarion Street Philadelphia, PA 19132;	)	
Patrice Everage 230 W. Abbotsford Avenue Philadelphia, PA 19144;	)	
Julia A. Davis 6314 Moylan Street Philadelphia, PA 19144;	)	
Yvette Bland 2201 N. 13th Street Apt. 1A Philadelphia, PA 19133;	)	Civil Action No. 98-cu-1223
Geraldine Newton 8039 Mansfield Avenue Philadelphia, PA 19150;	)	
Maria M. Rivera 5622 N. Third Street Philadelphia, PA 19120;	)	
Mary E. Miller 6816 Upland Street Philadelphia, PA 19142;	)	
Gregory and Catherine Luzak 5918 Elsinore Street Philadelphia, PA 19120;	)	

Fu-Zhen Xie
147 N. 9th Street
Philadelphia, PA 19107;

The Black Clergy of
Philadelphia and Vicinity
c/o Rev. Randall E.
McCaskill, Sr.
President
4950 N. 10th Street
Philadelphia, PA 19141;

Philadelphia
Branch NAACP
1231 N. Broad Street
Philadelphia, PA 19122;

ASPIRA, Inc. of
Pennsylvania
2726 N. 6th Street
Philadelphia, PA 19133;

Parents Union for
Public Schools
311 S. Juniper Street
Philadelphia, PA 19107;

Citizens Committee
on Public
Education in Philadelphia
311 S. Juniper Street
Philadelphia, PA 19107;

Parents United for
Better Schools
31 Maplewood Mall
Philadelphia, PA 19144;

David W. Hornbeck
Superintendent
The School District
of Philadelphia
21st and The Parkway
Philadelphia, PA 19103;

Floyd W. Alston
President
Board of Education of
The School District
of Philadelphia
21st and The Parkway
Philadelphia, PA 19103;

Board of Education of
The School District of
Philadelphia
21st and The Parkway
Philadelphia, PA 19103;

The School District
of Philadelphia
2130 Arch Street
Philadelphia, PA
19103-1390;

Edward G. Rendell
Mayor
City of Philadelphia
215 City Hall
Philadelphia, PA 19107;

City of Philadelphia
215 City Hall
Philadelphia, PA 19107;

Plantiffs,

v

Thomas J. Ridge
Governor of the
Commonwealth of
Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120;

Dr. James P. Gallagher)
Chairperson)
Commonwealth of)
Pennsylvania State)
Board of Education)
333 Market Street)
Harrisburg, PA 17126-0333;)
)
Dr. Eugene W. Hickok)
Secretary of Education)
333 Market Street)
Harrisburg, PA 17126-0333;)
)
Barbara Hafer)
Treasurer)
129 Finance Building)
Harrisburg, PA 17120-0018;)
)
Defendants.)

COMPLAINT

Preliminary Statement

1. Students who attend public school in Philadelphia, their parents and guardians, and organizations that represent their interests ("Students and Organization Plaintiffs"); The School District of Philadelphia, the Board of Education of The School District of Philadelphia, and officials who lead the School District ("School District Plaintiffs"); and the Mayor of the City of Philadelphia and the City of Philadelphia ("City Plaintiffs"), bring this action against officials of the Commonwealth of Pennsylvania who are responsible for the public education of children in the Commonwealth, including those in Philadelphia. Plaintiffs allege that Defendants have discriminated in effect, and with knowledge thereof before they acted, repeatedly, against children in the School District on grounds of their race, color and national origin by denying to the School District, and therefore to the children it educates, the financial support required to provide a thorough and efficient educational system which is racially non-discriminatory

and racially non-segregated and which provides educational opportunity equal to that which children who live in predominantly white school districts receive.

2. Because the Defendants receive federal funding to support public education throughout the Commonwealth, including in Philadelphia, they are prohibited by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d through 2000d-4a, and the Title VI implementing regulations governing federal financial support for education, 34 C.F.R. part 100, from discriminating on the basis of race, color, or national origin in the educational opportunities and funding system they provide. The Student and Organization Plaintiffs, the School District Plaintiffs, and the City Plaintiffs all are harmed by such discrimination by Defendants in the provision of such a system for funding public education in Pennsylvania, and seek declaratory, injunctive and other appropriate relief to stop further such discrimination.

I. THE PARTIES.

3. Plaintiff David Powell is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. David Powell is the father and guardian of Brandon Smith and Steven Smith, both minors, who also are African-American and who attend Ellwood Elementary School in the School District. David Powell seeks relief for himself and on behalf of Brandon Smith and Steven Smith, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

4. Plaintiff Shelean Parks is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Shelean Parks is the mother and guardian of Robin Parks, Robert Parks, MaryLean Parks and Willena Parks, all minors, who also are African-American and who attend Wanamaker Middle School (Robin) and Ferguson Elementary School (Robert, MaryLean and Willena) in the School District. Shelean Parks seeks relief for herself and on behalf of Robin Parks, Robert Parks, MaryLean Parks, and Willena Parks,

who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

5. Plaintiff Patrice Everage is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Patrice Everage is the mother and guardian of Christie Everage, a minor, who also is African-American and who attends John B. Kelly Elementary School in the School District. Patrice Everage seeks relief for herself and on behalf of Christie Everage, who is an intended beneficiary of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

6. Plaintiff Julia A. Davis is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Julia A. Davis is the mother and guardian of Rafiyq Davis, a minor, who also is African-American and who attends Lingelbach Elementary School in the School District. Julia A. Davis seeks relief for herself and on behalf of Rafiyq Davis, who is an intended beneficiary of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

7. Plaintiff Yvette Bland is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Yvette Blan is the mother and guardian of Marika Bland, Turquoise Bland, Robert Bland, Martinez Bland, and Marco Bland, all minors, who also are African-American and who attend Fitzpatrick Elementary School (Marika and Turquoise) and Ferguson Elementary School (Robert, Martinez and Marco) in the School District. Yvette Bland seeks relief for herself and on behalf of Marika Bland, Turquoise Bland, Robert Bland, Martinez Bland, and Marco Bland, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

8. Plaintiff Geraldine Newton is an African-American citizen, taxpayer, and resident of the Commonwealth and the City. Geraldine Newton is the mother and guardian of Christopher Newton, a minor, who also is African-American and who attends the Saul High School for Agricultural Science in

the School District. Geraldine Newton seeks relief for herself and on behalf of Christopher Newton, who is an intended beneficiary of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

9. Plaintiff Maria M. Rivera is an Hispanic citizen, taxpayer, and resident of the Commonwealth and the City. Maria M. Rivera is the mother and guardian of Rachelle Rivera, a minor, who also is Hispanic and who attends Lowell Elementary School in the School District. Maria M. Rivera seeks relief for herself and on behalf of Rachelle Rivera, who is an intended beneficiary of federal programs and funding for education, including the programs described in ¶¶ 34-36, below.

10. Plaintiff Mary E. Miller is a white citizen, taxpayer, and resident of the Commonwealth and the City. Mary E. Miller is the mother and guardian of Paul Miller and George Miller, both minors, who also are white and who attend the Furness High School and Pepper Middle School, respectively, in the School District. Mary E. Miller seeks relief for herself and on behalf of Paul Miller and George Miller, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

11. Plaintiffs Gregory and Catherine Luzak are white citizens, taxpayers, and residents of the Commonwealth and the City. Gregory and Catherine Luzak are the parents and guardians of Catherine Luzak, Gregory Luzak, Jr., and Danielle Luzak. Catherine Luzak and Gregory Luzak, Jr., both minors, also are white and attend the Franklin School in the School District. Gregory and Catherine Luzak intend that Danielle Luzak, a minor, who also is white, will attend kindergarten at a school in the School District in the fall of 1998. Catherine and Gregory Luzak seek relief for themselves and on behalf of Catherine Luzak, Gregory Luzak, Jr., and Danielle Luzak, who are the intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

12. Plaintiff Fu-Zhen Xie is a Chinese-American permanent resident of the United States, a taxpayer, and resident of the Commonwealth and the City. Fu-Zhen Xie is the mother

and guardian of Sandy Yu and Shannon Yu, both minors, who also are Chinese-American and who attend McCall Elementary School in the School District. Fu-Zhen Xie seeks relief for herself and on behalf of Sandy Yu and Shannon Yu, who are intended beneficiaries of federal programs and funding for public education, including the programs described in ¶¶ 34-36, below.

13. Plaintiff The Black Clergy of Philadelphia and Vicinity is an association consisting of over 400 ministers representing seven denominations and serving 300,000 people, of whom 80% live in the City of Philadelphia. The vast majority of its members are parents or grandparents of Philadelphia public school students. Many of the ministries represented by the Black Clergy of Philadelphia and Vicinity conduct Head Start and Get Set pre-school programs and run after-school programs or tutoring programs for students in order to assist in their education and overcome the inadequacies of the educational programs and services available in the School District, due at least in part to the Commonwealth's wrongful failure to provide sufficient funds to the School District.

14. Plaintiff Philadelphia Branch NAACP is a not-for-profit organization with over 3,000 members who are Philadelphia residents and taxpayers, more than half of whom are low-income parents of public school children. The Philadelphia Branch NAACP supports tutoring programs and workshops for Philadelphia public school students, raises funds to supplement technology and books available in the School District, supports literacy programs for adults, and takes other steps to compensate for the inadequacies in the educational programs and services available in the School District due at least in part to the Commonwealth's wrongful failure to provide sufficient funds to the School District. The Philadelphia Branch NAACP maintains an office at 1231 North Broad Street, Philadelphia, Pennsylvania.

15. Plaintiff ASPIRA, Inc. of Pennsylvania is a not-for-profit organization that works with more than 3,500 students in Philadelphia and more than 400 public school drop-outs in an attempt to compensate for the inadequacies in the educational programs and services available in the School District

due at least in part to the Commonwealth's wrongful failure to provide sufficient funds to the School District. More than 600 students enrolled in the School District are members of ASPIRA clubs and more than 400 parents are members. ASPIRA maintains an office at 2726 North 6th Street, Philadelphia, Pennsylvania.

16. Plaintiff Parents Union for Public Schools is a not-for-profit organization with nearly 1,000 members, all of whom are parents of students enrolled in the School District's schools. The Parents Union for Public Schools advised parents on resources available to their children in the school system and how to participate in the educational process to further their children's education, as well as acting as an advocate for parents and students in the system. Parents Union for Public Schools maintains an office at 311 South Juniper Street, Philadelphia, Pennsylvania.

17. Plaintiff Citizens Committee on Public Education in Philadelphia is a not-for-profit organization that has the purpose of maintaining and improving the quality of education available in the School District through public advocacy. It has more than 200 members, including four Home and School Associations from Philadelphia public schools. Many of its individual members are parents or grandparents of children enrolled in the School District. The Citizens Committee on Public Education in Philadelphia maintains offices at 311 South Juniper Street, Philadelphia, Pennsylvania.

18. Plaintiff Parents United for Better Schools is a not-for-profit parent advocacy organization with several thousands of members, the majority of whom are public school parents. It provides tutoring programs and other services to low income students and parents in an attempt to compensate for the inadequacies in the educational programs and services available in the School District due at least in part to the Commonwealth's wrongful failure to provide sufficient funds to the School District Parents United for Better Schools maintains an office at 31 Maplewood Mall, Philadelphia, Pennsylvania.

19. The Plaintiff Organizations each oppose racial discrimination and work to combat discrimination in public edu-

cation. Plaintiff Organizations have had to direct their funds and other resources from other activities because of the wrongful failure of the Commonwealth to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides educational opportunity equal to that which children who live in predominately white districts receive.

20. The School District Plaintiffs have been delegated by the Commonwealth part of the Commonwealth's responsibility to educate school-age children residing in the City. David W. Hornbeck, as Superintendent of the School District, Floyd W. Alston, as President of the Board of Education of The School District of Philadelphia, and the Board of Education of The School District of Philadelphia have been delegated those powers specified and necessarily implied by the laws of Pennsylvania concerning education of public school students in Philadelphia, and have responsibility for implementing those laws. Plaintiffs Hornbeck and Alston and the Board of Education of The School District of Philadelphia maintain offices at 21st and the Parkway, Philadelphia, Pennsylvania. The School District of Philadelphia, a corporate entity with the right to sue, operates pursuant to the Public School Code. The School District has an office at 2130 Arch Street, Philadelphia, Pennsylvania.

21. The School District has been granted certain home rule powers with respect to the provision of education in Philadelphia, pursuant to the First Class City Home Rule Education Act. The School District was created and established by the people of Philadelphia, in the School District Home Rule Charter.

22. The School District is the only public school district in the Commonwealth without the independent power of taxation.

23. The student population enrolled in the public schools in the School District has grown from 190,979 in the 1991-92 school year, to approximately 213,800 students in the 1997-98 school year. The student population enrolled in the School

District between the 1991-92 and 1997-98 school years has at all times been between approximately 77% and 80% racial and ethnic minority students.

24. In the 1995-96 school year, the School District was responsible for the education of only approximately 12% of the Commonwealth's total public school students, but it has the responsibility to serve nearly 50% of all African-American, Hispanic, Asian and other minority children attending public school in Pennsylvania.

25. Plaintiff Mayor Edward G. Rendell is the Chief Executive Officer of the City. Pursuant to the Philadelphia Home Rule Charter ("PHRC"), Mayor Rendell is responsible for the conduct of all the executive and administrative work of the City, including management of the City's finances, and promoting the City as a place where the citizens of the Commonwealth can live and work productively in a racially nondiscriminatory environment.

26. Plaintiff City of Philadelphia, a home rule municipal corporation, is the only City of the First Class in Pennsylvania. The City has adopted a Home Rule Charter in accordance with the First Class City Home Rule Act, 53 P.S. §§ 13101 *et seq.* The City's boundaries are coterminous with those of the School District, and the City relies on the same limited local tax base as does the School District for local revenues. The City has an office at 215 City Hall, Philadelphia, Pennsylvania.

27. Defendant Governor Thomas J. Ridge is the Chief Executive Officer of the Commonwealth, pursuant to Article IV of the Pennsylvania Constitution. The Governor has all powers specified and necessarily implied by the Constitution and laws of Pennsylvania, including the power and obligation to recommend education spending to the General Assembly, approve legislative appropriations, and supervise the executive departments that administer regulations and programs governing the School District, and to see that the Thirteenth and Fourteenth Amendments to the United States Constitution and all federal statutes and regulations are followed in carrying out his duties. The Governor is responsible, with the advice and consent of the Senate, for appointing the Secretary of Education and members of the State Board of Education.

Defendant Governor Ridge is sued in his official and individual capacities and has an office at 225 Main Capitol Building, Harrisburg, Pennsylvania.

28. Defendant Dr. James P. Gallagher, as Chairperson of the State Board of Education, has all powers specified and necessarily implied by the laws of Pennsylvania, including *inter alia*, powers and duties pertaining to school districts pursuant to 26 P.S. §§ 2601 B, *et seq.*, and is barred from carrying out any of his duties in a way that violates the Thirteenth of Fourteenth Amendment to the United States Constitution or any federal statute or regulation. Defendant Dr. Gallagher is sued in his official and individual capacities. Defendant Dr. Gallagher resides in the Eastern District of Pennsylvania at the White House, Philadelphia College of Textiles and Sciences, Henry Avenue and Schoolhouse Lane, Philadelphia, Pennsylvania, and has an office at 333 Market Street, Harrisburg, Pennsylvania.

29. Defendant Secretary of Education Eugene W. Hickok is a Constitutional officer under Article IV section 8 of the Pennsylvania Constitution and has all powers specified and necessarily implied by the Constitution and laws of Pennsylvania, including responsibility for administration and supervision of the Commonwealth Department of Education ("DOE"). Secretary Hickok is barred from carrying out any of his duties in a way that violates the Thirteenth and Fourteenth Amendment to the United States Constitution or any federal statute or regulation. The DOE, *inter alia*, is responsible for administering laws concerning public schools. 71 P.S. § 351, § 352 and § 1037. The DOE is a state education agency that receives and distributes federal funds under various federal programs affecting education. Secretary Hickok is sued in his official and individual capacities and has an office at 333 Market Street, Harrisburg, Pennsylvania.

30. Defendant State Treasurer Barbara Hafer is a constitutional officer under Article IV section 1 of the Pennsylvania Constitution and has all powers specified and necessarily implied by the Constitution and laws of Pennsylvania, and is responsible for the administration and supervision of the State Treasury, and is barred from carrying out any of her duties in

a way that violates the Thirteenth or Fourteenth Amendment to the United States Constitution or any federal statute or regulation. The Treasury is responsible for, *inter alia*, the disbursement of funds, both federal and state, for purposes of education. Pa Const. art. III, § 24, 71 P.S. § 247, 72 P.S. § 1501, § 4451 *et seq.* State Treasurer Hafer is sued in her official and individual capacities and has an office at 129 Finance Building, Harrisburg, Pennsylvania. (Defendants are collectively referred to herein as the "Commonwealth Defendants.")

31. The Plaintiffs are seeking only injunctive and declaratory relief against the above-named Commonwealth Defendants in their individual capacities.

II. JURISDICTION AND VENUE.

32. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1343(a)(3) and (4) (civil rights actions), and 28 U.S.C. §§ 2201, *et seq.*, (declaratory judgments).

33. Venue is appropriate pursuant to 28 U.S.C. § 1391(b), because the claim arose in the Eastern District of Pennsylvania and because Defendant Dr. James P. Gallagher resides in the Eastern District of Pennsylvania.

III. FEDERAL FINANCIAL ASSISTANCE.

34. The Commonwealth receives federal financial assistance for the support of public education in Pennsylvania. Public elementary and secondary education in Pennsylvania, including Philadelphia, is a program or activity receiving federal financial assistance.

35. The Commonwealth receives federal financial assistance through a variety of federal programs designed to support the efforts of Commonwealth public school districts, including Philadelphia, to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides educational opportunity equal to that which children who live in predominately white school districts receive. The School District receives federal financial assistance directly and also receives federal funds

from the Commonwealth through federal programs that distribute funds for education to local school districts through the states, including, *inter alia:*

a. Funding under the Elementary and Secondary Education Act of 1965 ("ESEA"), as amended by the Improving America's School Act of 1994, known as Chapter I or Title 1. Chapter I/Title 1 provides federal financial assistance to state and local education agencies, for the purpose, *inter alia,* of meeting the special educational needs of disadvantaged children of low income families;

b. Funding under ESEA Chapter II or Title 6, titled "Innovative Education Program Strategies," for Commonwealth-administered block grants to permit local school districts to design and implement promising or innovative educational improvement programs;

c. Funding under ESEA Title 3 — Part A, Technology for Education, that provides competitive grants to support the development, interconnection, implementation, improvement, and maintenance of an effective educational technology infrastructure;

d. Funding under the Dwight D. Eisenhower Professional Development Program, to strengthen and improve teaching and learning in core academic subject areas.

36. The City of Philadelphia receives federal funds, both directly and through the Commonwealth, for programs and services that support and assist the School District and its students, including, *inter alia:*

a. Funding that the City uses to establish Family Centers in schools within the School District to provide support services to families with children who are at risk of abuse and neglect;

b. Funding through the D.A.R.E. program, which the City uses to send police officers into classrooms in the School District to conduct drug awareness education;

c. Funding for an Adolescent Initiative federal grant through the Commonwealth that provides services to children in foster care to insure that they graduate from high school and learn skills for living independently;

d. Funding through a federal Community Service Block Grant for an after-school computer education program and, through the Philadelphia Police Department, a Local Law Enforcement Block Grant that is used to increase truancy enforcement in School District schools.

IV. THE COMMONWEALTH DEFENDANTS ARE AWARE OF THE INABILITY OF THE SCHOOL DISTRICT TO PROVIDE EDUCATIONAL OPPORTUNITY EQUAL TO THAT PROVIDED IN PREDOMINANTLY WHITE SCHOOL DISTRICTS AND OTHERWISE TO MEET THE EDUCATIONAL NEEDS OF ALL OF THE SCHOOL DISTRICT'S STUDENTS.

37. The Commonwealth Defendants are and have been aware of the characteristics of the students in the School District and of the effects of racial isolation, segregation and discrimination on those students through the actions of various Commonwealth agencies and courts. The Commonwealth Defendants are on notice that federal, Commonwealth, and local governmental policies – some of which existed for centuries until May 17, 1954, some of which continued to a much later date, and some of which continue until today – have adversely affected African-Americans and other minorities and that in many cases the adverse effects of such policies still exist today. Specifically, as to the School District and its students, the Pennsylvania Human Relations Commission ("PHRC"), a commission of the Commonwealth of Pennsylvania, determined on June 7, 1971, that the School District was unlawfully segregated by race. That determination was affirmed by the Commonwealth Court and the Supreme Court of Pennsylvania. *PHRC v. School Dist. of Philadelphia*, 6 Pa. Cmwlth. 281, 294 A.2d 410 (1972), *aff'd*, 455 Pa. 52, 313 A.2d 156 (1973).

38. In 1994, the Commonwealth Court found that the School District continues to deny students equal educational opportunity based on their race. *PHRC v. School Dist. of Philadelphia*, 161 Pa. Cmwlth. 281, 638 A.2d 304 (1994).

39. The PHRC and the Commonwealth Court have conducted extensive proceedings designed to formulate and modify remedial plans to combat the effects of segregated conditions in the School District. The PHRC, an agency of the Commonwealth, has argued throughout the proceedings that the purpose of the Pennsylvania Human Relations Act is to promote equal opportunity, including equal educational opportunity for all of the students attending the public schools within the Commonwealth, but the School District has not yet succeeded in doing so.

40. On November 3, 1995, the Commonwealth of Pennsylvania and Governor Ridge were joined as parties in *Pennsylvania Human Relations Commission v. School District of Philadelphia*, King's Bench Jurisdiction Assumed, No. 119 E.D. Misc. Dkt. 1991 __ Pa. __ (Pa. July 3, 1996). As a result, *inter alia*, of the 27-year litigation by a Commonwealth agency and joinder of the Governor and Commonwealth, the Commonwealth Defendants are fully on notice that the School District has not succeeded in desegregating its schools or in providing equal educational opportunities for minority students. The Commonwealth Defendants also are on notice that the School District has proposed an education reform plan designed to cure the racial disparities that exist in the School District, which has been Court approved and ordered; that the School District lacks adequate funds to implement that plan; that the Commonwealth has not supplied such funds; and that the School District, with no independent power to tax and an inadequate tax base from which to raise funds, therefore cannot implement fully that plan.

41. Records kept by the Commonwealth Defendants reflect the racial and ethnic composition of students enrolled in school districts throughout the Commonwealth. At all times relevant to this Complaint, the Commonwealth Defendants were aware that the School District was respsonsible for educating the largest group of non-white students in any school district in the Commonwealth — over 75% African-American, Hispanic, Asian and other minority — while the non-white enrollment in public schools in the rest of the Commonwealth as a whole was approximately 11%.

42. Commonwealth Defendants' records also demonstrate that, in 1995-96 (Fiscal Year 1996), the percentage of children attending school in the School District from families receiving Aid to Families with Dependent Children ("AFDC"), an indicator used by the Commonwealth Defendants to measure family poverty for education purposes, reached approximately 46% of the estimated Average Daily Membership ("ADM") of the School District. For the same year, Commonwealth records show that approximately 80% of the students in the School District were from low-income families, defined as families eligible for federally subsidized free or reduced price meals, and that the School District had the highest incidence of students in poverty of all 62 school districts in the surrounding five-county region.

43. The Commonwealth Defendants are and have been on notice that the City has among the highest incidences in the Commonwealth of poverty, support cases, child abuse, juvenile delinquency, births to single mothers, welfare placements, and AFDC placements. The Commonwealth Defendants are specifically on notice that Philadelphia has one of the Commonwealth's highest poverty ratios through, *inter alia*, the proceedings in *PHRC v. School Dist. of Philadelphia*, No. 1056 C.D. 1973, in the Commonwealth Court of Pennsylvania.

44. The Commonwealth Defendants further are and have been on notice that a school district, such as Philadelphia, faces a greater educational challenge and costs in educating children from poor families. A 1996 Report of the Governor's Advisory Commission on Public School Finance observed that "[i]n those areas in which there is a large population living in poverty, where crime is a serious problem, where dependence on public assistance is prevalent, it is more difficult to educate students and more difficult for students to achieve at competitive levels. Moreover, schools confronting such problems may often provide a number of services that schools which do not confront these problems need not provide. . . ."

45. Through the Commonwealth's own indicators of student performance, and other indicators of student performance known to the Commonwealth Defendants, the Commonwealth Defendants are and have been on notice of the

inability of the School District, due primarily to insufficient resources because sufficient resources have been and are being wrongfully withheld by the Commonwealth, to provide an appropriate education and equal educational opportunity, or to meet the needs of a substantial number of its students particularly including its racial and ethnic minority students.

46. The mean test score for students in the School District is significantly lower than for students statewide on indicators such as the Pennsylvania System of School Assessment tests and the Scholastic Aptitude Test. Indicators such as on-time high school graduation rates and Scholastic Aptitude Test Scores reveal that students in the School District disproportionately perform lower than their peers elsewhere in the Commonwealth, and that racial and ethnic minority students in the School District disproportionately perform lower than their white counterparts.

V. THE COMMONWEALTH DEFENDANTS' FUNDING POLICIES AND PRACTICES HAVE DISPROPORTIONATELY AND REPEATEDLY DISADVANTAGED PHILADELPHIA, WITH FORESEEABLE HARM TO EQUAL EDUCATIONAL OPPORTUNITY AND ACHIEVEMENT FOR THE STUDENTS THAT THE SCHOOL DISTRICT SERVES.

47. The Commonwealth Defendants' statutorily established system for funding public education depends upon a combination of locally generated revenues authorized by the Commonwealth (that rely primarily upon local property taxes), state funds provided by the Commonwealth Treasury ("Commonwealth treasury revenues"), and certain federal funds. What the Commonwealth terms Basic Education Funding is the baseline instructional subsidy for school districts in the Commonwealth and is the principal source of Commonwealth treasury revenues to school districts. The Commonwealth Defendants adopted, with prior knowledge of its discriminatory consequences on students based on race and national origin in the School District and elsewhere, a different methodology each year from 1991-92 through 1996-97 to

determine the Basic Education Funding entitlement that would be provided in the following year to school districts in the Commonwealth.

48. In the 1991-92 payable school year and for eight years previous, the Basic Education Funding provided by the Commonwealth was calculated under a formula that included an "aid ratio" factor that operated to increase aid to school districts that were relatively less wealthy (based on a combination of measures of personal income and market value of property in the district) than school districts in the Commonwealth on average. That formula also included extra subsidies for low-income students and population density.

49. The Commonwealth Defendants abandoned that formula after the 1991-92 school year. No Basic Education Funding formula used since by the Commonwealth Defendants has provided the subsidy for population density. For each year from 1993-94 through 1997-98, the Basic Education Funding formula used by the Commonwealth Defendants either ignored or significantly diminished the impact of the "aid ratio" factor that operates to increase aid to school districts that are relatively less wealthy than school districts in the Commonwealth on average. Formulas used by the Commonwealth after 1991-92 also have reduced the role of the student poverty factor. These formulae had an adverse effect on school districts which had the larger minority student populations, as the Commonwealth and the Commonwealth Defendants were aware.

50. The Commonwealth Defendants' own financial data demonstrate that the result of the changes in the formula has been a shift in Commonwealth treasury revenues away from Philadelphia schools, despite their well-known needs and the relatively high cost of educating Philadelphia students, which the Commonwealth Defendants knew or should have known represents a disproportionate allocation of funds away from the largest concentration of minority students in the Commonwealth.

51. The Commonwealth Defendants have changed the Commonwealth's Basic Education Funding in ways that had the foreseeable effect of disadvantaging students in Philadelphia, who are on average more likely to be from racial and

ethnic minorities and poorer than students across the Commonwealth; the School District, because it educates such students in substantial numbers; and the City because it suffers and directly bears the economic and non-economic consequences of this disproportionate underfunding. The foreseeable result is a formula and an overall system of funding education that disadvantages school districts with a high concentration of minority students in poverty, and thereby all students enrolled in the School District.

52. The racially discriminatory impact of the Commonwealth Defendants' system for funding school districts is illustrated by a comparison of the School District with the other 61 neighboring school districts in the surrounding five-county area. Based on Commonwealth estimates of revenue for 1995-96, the education of students in the 61 neighboring suburban school districts was funded at a weighted average level of $8,476 in total revenue per pupil, while the School District received $6,861 — a per pupil difference of $1,615, increasing from a gap of $1,083 per student in 1991-92. Of the 61 neighboring school districts, as of 1995-96, 48 had more than 80% white students and only two had more than 50% non-white students. Overall enrollment of the 61 districts has a weighted average of only 15.6% non-white students.

53. The Commonwealth Defendants' funding system for education gives school districts with high proportions of white students on average more Commonwealth treasury revenues than school districts with high proportions of non-white students, where the levels of student poverty are the same. When average Commonwealth treasury revenues per pupil in relation to the poverty character of the student body (as measured by percentage of students on AFDC) for each school district are calculated, the data for the School District in 1990-91 reveal that it received 17.2% less than the average of school districts with the same poverty rate. In a ranking of the 500 school districts, where number 1 is the school district receiving the greatest excess over what would be expected statistically on the basis of poverty using the Commonwealth's own funding data, and number 500 is the school district with the greatest shortfall, the School District ranked 421 in 1990-91. By

1995-96, Philadelphia received 33.1% less than expected statistically, and its rank had dropped to 498 out of the 500 school districts in the Commonwealth.

54. Every other or virtually every other predominantly minority school district in the Commonwealth also receives less funding than is expected statistically on the basis of its poverty. All 12 of the school districts in the Commonwealth that in 1992 were more than 50% in minority student population were funded at a lower level in 1990-91 than expected statistically on this measure. By 1995-96, 11 out of those 12 high-minority school districts still had less Commonwealth treasury revenues per student than school districts with higher white enrollments and the same level of poverty.

55. When Commonwealth treasury revenues per pupil are analyzed by the amount of poverty in school districts across the Commonwealth, whether measured by AFDC or percentage of students eligible for free and reduced price meals, school districts with higher proportions of non-white students receive less Commonwealth treasury revenues than districts with higher proportions of white students. On average, for 1995-96, for two school districts with the same level of poverty as measured by AFDC, the school district with higher non-white enrollment received $52.88 *less* per pupil for each increase of 1% in non-white enrollment.

56. Commonwealth data also show that, between fiscal years 1992 and 1996, total revenues to school districts with 50% or more white students increased by a weighted average of $776 per pupil. For the same period, the increase in the School District was only $84 per pupil, despite its greater needs. The school districts in Pennsylvania with African-American and other non-white enrollment of more than 75% received a weighted average increase in total revenue of only $149 per pupil.

57. For fiscal year 1996, each student in the School District had $458 less in support for his or her education than the average student in a school district that was majority white. For the same year, the average student in a school district that was less than 25% white had $389 less in educational support than the average student in a majority white school district.

58. Commonwealth data estimating Commonwealth treasury revenues for 1996 among the same school districts, by race, similarly reflect revenue increases that disproportionately benefit the school districts with relatively high proportions of white students and disproportionately shift revenues away from the school districts with relatively high proportions of non-white students. Commonwealth data show that, between fiscal years 1992 and 1996, Commonwealth treasury revenues to school districts with 50% or more white students increased by a weighted average of $498 per pupil. For the same period, the increase in the School District was only $361 per pupil, despite its greater needs. The school districts in Pennsylvania with African-American and other non-white enrollments of more than 75% received a weighted average increase in Commonwealth treasury revenues of only $384 per pupil.

59. These racial distinctions in the distribution of revenues for education, under the Commonwealth Defendants' policies and practices, are legally unjustifiable and racially discriminatory and Commonwealth Defendants had knowledge of such effects each time prior to taking action which achieved these results.

60. The Commonwealth's funding policies and practices disadvantage, and thereby discriminate against, school districts such as Philadelphia with relatively high non-white enrollments, and the students in those districts, and Commonwealth Defendants had knowledge of such effects each time prior to taking action which achieved these results.

61. The impact of the Commonwealth's funding policies and practices has been to deprive the School District of hundreds of millions of dollars per year. The impact will continue unless the Commonwealth Defendants' wrongful funding policies and practices are enjoined.

62. The foreseeable result has been serious impairment of the educational opportunities of the students in the School District, including the Student Plaintiffs. Lack of sufficient resources in the School District results, *inter alia*, in larger class sizes and higher pupil-to-teachers ratios than in surrounding school districts; reduced curricula; cuts in and elimi-

nation of programs and electives and advanced placement courses; shortages of textbooks and use of outdated textbooks; shortages of equipment, supplies and technology; spartan physical education and extracurricular programs; lack of librarians and library services; insufficient numbers of counselors and psychologists; and many inadequate and crumbling physical facilities.

63. The School District Plaintiffs have adopted annual budgets which have included substantial budget cuts since 1991-92, responding in large measure to the Commonwealth Defendant's challenged racially discriminatory funding policies and practices. Since the 1988-89 school year, more than 1,100 school-based positions have been eliminated, including more than 800 classroom assistants and over 50 librarians. More than 80% of the School District's summer school programs have been dismantled, and extracurricular activities in high schools, including athletics, have been slashed nearly 50%. The School District Plaintiffs have undertaken other budget cuts which are outside of the classroom, but many of which also harm students' ability to learn. The School District Plaintiffs find themselves unable to make further budget cuts without additional irreparable harm to the School District's largely minority student population.

64. The City Plaintiffs are injured by the Commonwealth Defendants' challenged racially discriminatory funding policies and practices, since they contribute to declining urban population and erosion of the City's tax base. Individuals and businesses choose where to locate their residences and businesses in large part based upon the quality of public education in the area, and move out of or do not locate in the City because of the condition of the City's public school system. The fact that the resultant educational system more often turns out students in the School District not as equipped to deal with modern employment and modern life as the students who have the advantage of the educational system in the predominately white school districts of the Commonwealth further erodes the City's tax base.

65. The excessive requirements of local funding for the School District contribute to residents of the City ranking first

in the Commonwealth in overall tax burden. The City made a $15 million special appropriation for the School District in spring of 1996, and again in the spring of 1997, in order to help avert a deficit. The City enacted the controversial liquor-by-the drink tax in 1994, at substantial economic cost to the tax base and political cost to the City, in order to provide the School District with approximately $21 million per year. The City, through its voluntary Contributions Program beginning in 1994, persuaded owners of tax exempt real estate to contribute approximately $3.5 million a year in voluntary contributions directly to the School District. The City continues to provide numerous forms of non-tax assistance to the School District, all at substantial cost. The expenditure of these sums for education, to compensate for the Commonwealth Defendants' wrongful funding policies and practices, means that the City has fewer funds available to meet other pressing, unmet or underserved urban needs.

66. The Commonwealth Defendants' challenged racially discriminatory funding policies and practices impose excessive requirements on local funding, making it impossible for the City to afford the tax relief its citizens desperately need, and making it impossible for the City to provide the competitive tax rates and public education system which it needs to attract and retain residents and jobs in order to bolster and replenish its tax base and further revitalize the schools.

Count I: Racial and National Origin Discrimination by Differential and Disparate Treatment Under Title VI Implementing Regulations (All Plaintiffs Against All defendants)

67. The allegations set forth in ¶¶ 1-66 above are incorporated herein by reference, as if fully set forth here.

68. Title VI provides in pertinent part:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d.

69. Regulations implementing the requirements of Title VI for education programs or activities receiving federal financial assistance have been promulgated by the United States Department of Education, 34 C.F.R. part 100.

70. The United States Department of Education regulations prohibit federal fund recipients from the following discriminatory actions on the basis of race, color or national origin:

> Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
>
> Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
>
> * * *
>
> A recipient, in determining the type of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect or subjecting individuals to discrimination because of their race, color, or national origin. . . .

34 C.F.R. § 100.3(b)(1), (2).

71. Public elementary and secondary education in Pennsylvania, including Philadelphia, is a program or activity to which Title VI and its implementing regulations apply. The Commonwealth received federal financial assistance from the United States Department of Education to support public education in Philadelphia in amounts exceeding $80 million in the 1996-97 school year, and continues to receive such assistance.

72. Offices and agencies of the Commonwealth for which the Commonwealth Defendants are responsible are federal fund recipients under applicable administrative regulations implementing Title VI and are subject to the prohibitions of Title VI and the administrative implementing regulations promulgated thereunder by the United States Department of Education.

73. The Commonwealth Defendants' funding policies and practices wrongfully discriminate against African-American, Hispanic, Asian and other minority students in the School District by utilizing criteria and methods that have had the foreseeable effect of subjecting such students to discrimination because of their race, color, or national origin, by disproportionately denying them necessary support for their education, in violation of the Title VI implementing regulations applicable to federal education programs. The Commonwealth Defendants' funding policies and practices in turn harm the educational opportunities of all students in the School District, the School District Plaintiffs' ability to offer a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which provides educational opportunity equal to that which children who live in predominately white school districts receive, and the City's economic and non-economic health by disproportionately undermining the quality of public education in Philadelphia.

74. While the Commonwealth Defendants have been accepting federal financial assistance to supplement their education efforts the Commonwealth, their policies and practices in the Commonwealth's education funding system have wrongfully and disproportionately shifted funding away from Philadelphia and its substantially minority student body, in violation of Title VI and its implementing regulations.

75. The Commonwealth Defendants' funding policies and practices have the foreseeable, racially discriminatory effect of further isolating the Student Plaintiffs, the School District, and the City by race in the Philadelphia metropolitan area, and of impairing the School District Plaintiffs' ability to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated and which

provides an educational opportunity equal to that which children who live in predominately white school districts receive, all in violation of the Title VI implementing regulations.

76. The implementing regulations interpreting the requirements of Title VI further prohibit federal fund recipients from utilizing "criteria or methods of administration which . . . have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." 34 C.F.R. § 100.3(b)(2).

77. The objectives of the Commonwealth's program and activity of public school education in Pennsylvania, for which the Commonwealth receives federal funds, are defeated or substantially impaired in Philadelphia by the Commonwealth Defendants' challenged racially discriminatory funding policies and practices. The objectives of specific federal programs for which the Commonwealth receives federal funds also are defeated or impaired by the Commonwealth Defendants' challenged funding policies and practices. Such federal programs include, *inter alia:*

a. Chapter I in its current reauthorization by Congress, which includes the objectives of enabling "schools to provide opportunities for children served to acquire the knowledge and skills contained in the challenging State content standards and to meet the challenging State performance standards developed for all children." 20 U.S.C. § 6301(d);

b. Title 6 in its current authorization by Congress, which includes the objectives of supporting state and local school reform efforts and "State and local efforts to accomplish the National Education Goals." 20 U.S.C. § 7301(b);

c. The Technology for Education Act of 1994, which includes the objectives of support for "the acquisition and use by elementary and secondary schools in the United States of technology and technology-enhanced curricula, instruction, and administrative support resources and services to improve the delivery of educational services." 20 U.S.C. § 6812;

d. The Dwight D. Eisenhower Professional Development Program, which includes the objectives of supporting "access to sustained and intensive high-quality professional develop-

ment that is aligned to challenging State content standards and challenging State student performance standards and to support the development and implementation of sustained and intensive high-quality professional development activities in the core academic subjects. . . ." 20 U.S.C. § 6602.

78. While the School District uses federal funding for the purposes designated, the Commonwealth Defendants' wrongfully discriminatory funding policies and practices result in the School District Plaintiffs' inability to meet the objectives of the federal programs. The Commonwealth Defendants' wrongfully discriminatory funding policies and practices also result in the School District Plaintiffs' inability to meet the objectives of the Commonwealth's federally funded program of public education, responsibility for which has been delegated in part to the School District Plaintiffs by the Commonwealth, and the needs of the School District's predominantly minority student population. Thereby, the Commonwealth Defendants are in violation of the United States Department of Education regulations implementing Title VI.

Count II: Under 42 U.S.C. § 1983 For Deprivation Of Rights Secured by the Laws of the United States (Student and Organization Plaintiffs Against All Defendants)

79. The allegations set forth in ¶¶ 1-78 above are incorporated herein by reference, as if fully set forth here.

80. The Commonwealth Defendants' actions complained of herein have the racially discriminatory effect described herein, Commonwealth Defendants were aware of that effect before they took such actions, and such actions were repeatedly taken with such knowledge.

81. The Civil Rights Act of 1871, 42 U.S.C. § 1983, provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person which the jurisdiction thereof to the deprivation of any rights, privileges,

or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

82. The rights secured by Title VI, 42 U.S.C. §§ 2000d through 2000d-4a, and the regulations implementing Title VI for education programs or activities receiving federal financial assistance, 34 C.F.R. part 100, are rights, privileges or immunities secured by the laws within the meaning of 42 U.S.C. § 1983.

83. The Commonwealth Defendants' funding policies and practices, by discrimination against African-American, Hispanic, Asian and other minority students in the School District, harm the educational opportunities of the Student Plaintiffs in violation of the Title VI implementing regulations as alleged in Count I above. The Commonwealth Defendants thereby have deprived the Student Plaintiffs, and the Organization Plaintiffs that represent the interests of such students, of rights, privileges, and immunities secured by the laws of the United States, in violation of 42 U.S.C. § 1983.

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Declare that the Commonwealth Defendants, through their funding policies and practices, discriminate against African-American, Hispanic, Asian and other minority students in the School District and the City, and thereby harm the Student and Organization Plaintiffs, the School District Plaintiffs and the City Plaintiffs, in violation of the Title VI administrative regulations promulgated by the United States Department of Education to implement the nondiscrimination requirements of Title VI;

2. Declare that the Commonwealth Defendants, through their funding policies and practices, deprive the Student Plaintiffs, and the Organization Plaintiffs that represent the interests of such students, of their rights, privileges and immunities secured by the laws of the United States, in violation of 42 U.S.C. § 1983;

3. Enjoin the Commonwealth Defendants from continuing to implement a system of funding public schools that dis-

criminates against the African-American, Hispanic, Asian and other minority children enrolled in The School District of Philadelphia, and that thereby harms the Student and Organization Plaintiffs, the School District Plaintiffs and the City Plaintiffs;

4. Retain jurisdiction to enforce its declaratory and injunctive relief;

5. Award Plaintiffs their costs, including reasonable attorneys' fees; and

6. Award such other relief as this Court deems necessary, effective and appropriate.

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APPENDIX I
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID POWELL, et al.,	)	
	)	
Plaintiffs	)	
	)	C.A. No. 98-CV-1223
v.	)	
	)	
THOMAS J. RIDGE, et al.,	)	
	)	
Defendants.	)	

BRIEF OF THE UNITED STATES AS AMICUS CURIAE AND BRIEF IN INTERVENTION IN OPPOSITION TO DEFENDANT INTERVENORS' MOTION TO DISMISS OR FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

On June 17, 1998, the United States filed its Motion for Leave to Participate as *Amicus Curiae*, Memorandum in Support, and Brief as *Amicus Curiae* in the above-captioned action. The United States realleges and incorporates these pleadings herein by reference. Accordingly, we will not repeat in the instant brief either the Interest of the United States, or the Background of the case prior to the intervention and Motion to Dismiss or for Judgment on the Pleadings of defendant intervenor state legislators Jubelirer, Ryan, Rhoades, and Stairs.

On May 6, 1998, four Pennsylvania legislators moved to intervene as defendants in the above-captioned case, and the court granted the unopposed motion on June 3 1998. On July 2, 1998, the defendant intervenor legislators filed their Motion to Dismiss or for Judgment on the Pleadings, and Brief in Support, pursuant to Rules 12(b)(1), (6), (c), Fed. R. Civ. P. (Def. Bf.).

* * *

Danson v. Casey, 382 A.2d 1238, 1242 (Pa. Commw. Ct. 1978), *aff'd*, 399 A.2d 360 (Pa. 1979); *O'Donnell v. Casey*, 405 A.2d 1006, 1009 (Pa. Commw. Ct. 1979) (rejecting state constitutional challenges, based on equal protection and due process clauses, to earlier Commonwealth education funding formulae). The "benefit" of this program, then, is not simply a *per capita* grant, but instead is an assurance that each school district receives sufficient funds so that, combined with its own revenues, it can provide each student equal and meaningful access to the educational program provided by the state.

In determining whether such meaningful access is being provided, it may be appropriate to focus on, for instance, the demands on social services in addition to education on an urban area's tax base,[8] the "buying power" of the education dollar in an urban school district,[9] or the special education and physical plant needs that must be addressed in such a district.[10] In short, as Pennsylvania law and *Lau* make clear, the Commonwealth is required to ensure that all schoolchildren have equal and meaningful access to the educational program

---

8. The concept of "municipal overburden" refers to the fact that large cities must devote a large percentage of their tax revenues to address "big city" problems. *See, e.g., Shortchanging Children: The Impact of Fiscal Inequity on the Education of Students at Risk*, House Comm. on Educ. & Labor, 101st Cong., 2d Sess. 9 (Comm. Print 1990).

9. For example, the National Center for Education Statistics ("NCES"), a federal research agency, estimates that it costs approximately 15% more to hire teachers in Philadelphia than in other parts of Pennsylvania. NCES, *Public School Teacher Cost Differences Across the United States* at 62 (Oct. 1995). In this sense, defendant intervenors' attempt to analogize the hospitalization benefit in *Choate* to the education benefit in the instant case misses the mark. While one can argue that the benefit in *Choate*, 14 days of hospitalization, was identical anywhere in Tennessee, it is far more difficult to argue that one dollar in education funding purchases the same services in Philadelphia as in rural Pennsylvania.

10. Fourteen percent of Philadelphia students are eligible for special education programs, compared with the national average of 10%. Council of Great City Schools, *National Urban Education Goals: 1992-93 Indicators Report* at xviii, 207 (Sept. 1994). Studies have shown that special education programs are over twice as costly as mainstream education programs. NCES, *Disparities in Public School District Spending 1989-90* at 6-7 (Feb. 1995).

provided by the state; the plaintiffs' allegations that the Commonwealth fails to do so state an actionable Title VI claim.

II. THE TITLE VI DISCRIMINATORY EFFECTS REGULATION IS CLEARLY WITHIN THE SCOPE OF THE ENABLING STATUTE.

Defendant intervenors contend that the discriminatory effects regulation promulgated by the U.S. Department of Education pursuant to Title VI is unlawful because Title VI "is limited to intentional discrimination," and this regulation "go[es] far beyond intentional discrimination and impose[s] an 'effects' test unrelated to the intent of the federal grant recipient." Def. Bf. at 20. Defendants' contention is without merit.

The discriminatory effects regulation is clearly within the scope of the enabling statute. In *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582 (1983), the proposition that regulations prohibiting discriminatory effects are valid Title VI implementation regulations clearly garnered the approval of a majority of the Court.[11] *See id.* at 584

* * *

11. Defendant intervenors rely on a concurring opinion in *Guardians* which did not garner the support of a majority of the Court. Defendant intervenors' reliance on *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976), is also puzzling. That decision was reached prior to the Supreme Court's holding in *Guardians*, and *Ernst* is mentioned only in Justice O'Connor's concurrence in *Guardians*, in which no other Justice joined. Moreover, in a subsequent decision, *United States v. O'Hagan*, 117 S.Ct. 2199, 2214-2217 (1997), the Supreme Court examined the issue of whether the Securities and Exchange Commission exceeded its rulemaking authority under its statute in promulgating a particular regulation. The Eighth Circuit had held that the regulation exceeded the agency's rulemaking authority because the regulation created its own definition of a violation. *Id.* at 2215 - 2217. The Supreme Court disagreed, and upheld the regulation as a valid exercise of the agency rulemaking authority, stating that "[a]

Nos. 99-527 & 99-574

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

MATTHEW J. RYAN, ET AL.,

and

THOMAS RIDGE, ET AL.,

Petitioners,

v.

DAVID POWELL, ET AL.,

Respondents.

On Petitions for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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All Respondents are individuals, governmental bodies, or membership organizations. None of the incorporated membership organizations has a parent company or nonwholly owned subsidiary company.

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IN THE

Supreme Court of the United States

Nos. 99-527 & 99-574

MATTHEW J. RYAN, ET AL.,

and

THOMAS RIDGE, ET AL.,

Petitioners,

v.

DAVID POWELL, ET AL.,

Respondents.

On Petitions for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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BRIEF IN OPPOSITION

INTRODUCTION

Petitioners, state officials who accept federal funds for public schools, create and knowingly perpetuate a system of public school funding that results in worsening racial disparities, but argue that they are completely insulated from accountability in federal court for their conduct. Their effort to insulate their conduct from review is undeserving of this Court's attention. Petitioners have not presented "compelling reasons," Supreme Court Rule 10, for review by this Court of the carefully reasoned, unanimous opinion of the Third Circuit holding that this case may go forward. The

Third Circuit reversed the dismissal of this case because the District Court "mischaracterized" the allegations of the Complaint and erred in dismissing claims under the United States Department of Education regulation effectuating Title VI of the Civil Rights Act of 1964 and 42 U.S.C. § 1983, but did not presage which side ultimately will prevail. Because Petitioners can cite no Circuit split or conflict with relevant decisions of this Court, and given the very real prospect that this case ultimately will be resolved without the necessity of reaching all, or indeed any, of the questions presented by Petitioners, this Court should decline review now and permit Respondents to develop and present evidence to support their claims.

COUNTERSTATEMENT

A. The Complaint. This Counterstatement is drawn from the Complaint, which must be taken as true on review of a motion to dismiss. *Haddle v. Garrison*, 525 U.S. 121, 119 S. Ct. 489, 491 (1998). Respondents accordingly do not undertake here to correct factual misstatements or to respond to Petitioners' reliance on material outside of the record. *E.g.*, Leg. Pet. 3 n.6. [1]

Respondents are schoolchilden in the Philadelphia Public School District ("the School District") and their parents; organizations that combat racial discrimination in public education and seek sufficient educational support for children in the School District; the School District, its Superintendent and Board of Education; and the Mayor and City of Philadelphia. App. 202a-208a. The School District educates a student body that is nearly 80% African-American, Hispanic, Asian and

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[1] The Petition in No. 99-527, filed by Pennsylvania Legislative Branch officials who intervened as defendants in the District Court, is referenced as "Leg. Pet." "Ex. Pet." refers to the Petition in No. 99-574 filed by Pennsylvania Executive Branch Petitioners. "App." refers to the Appendix to Petition for Writ of Certiorari filed in No. 99-574.

other minority students and that comprises nearly 50% of the minority public school students in Pennsylvania. App. 207a-208a, ¶¶ 23, 24. Minority enrollment in public schools in the rest of Pennsylvania as a whole is only approximately 11%. App. 213a, ¶ 41. The School District's minority composition is known to Pennsylvania officials, who also have knowledge that, more than 25 years ago, state courts and a state agency found the School District was unlawfully segregated by race, with segregated conditions persisting into the 1990s. App. 212a-214a.

Petitioners Ridge, Gallagher, Hickok and Hafer are the Pennsylvania executive branch officials named as defendants in this action. They have responsibility for administering public education in Pennsylvania and accept federal funds for that purpose. App. 208a-212a. A group of legislative branch officials -- Petitioners Ryan, Jubelirer, Stairs and Rhoades -- intervened as defendants to support the Executive Petitioners, although the Executive Petitioners claim that Legislative Petitioners do not receive federal funds "and therefore are not subject to Title VI." Ex. Pet. 8.

Pennsylvania provides funding to school districts for public education through a "statutorily established system" that "depends upon a combination of locally generated revenues authorized by the Commonwealth (that rely primarily upon local property taxes), state funds provided by the Commonwealth [t]reasury ('Commonwealth treasury revenues'), and certain federal funds." App. 215a, ¶ 47. Commonwealth treasury revenues consist of a baseline instructional subsidy to public school districts adopted each year, called Basic Education Funding, *id.*, and categorical subsidies distributed to public school districts according to legislative enactments. The terms by which local funding for each Pennsylvania school district may be generated are controlled by state statute, 24 P.S. §§ 6-601 to 6-695, App. 64a-115a; 53 P.S. § 16101. Federal

education funds are appropriated through state legislative and gubernatorial action. *See Shapp v. Sloan*, 391 A.2d 595 (Pa. 1978), *appeal dismissed sub nom. Thornburgh v. Casey*, 440 U.S. 942 (1979).

Pennsylvania's method of funding public education yields racially different results: Funding per child is less in the predominantly minority School District than it is per child in otherwise similarly situated districts that educate predominantly white students. App. 217a-218a, ¶¶ 53, 55. This racial disparity per child exists not just in Philadelphia, but also in other predominantly minority districts in Pennsylvania, *e.g.*, App. 218a, ¶ 55, and has grown over time with respect to both Commonwealth treasury revenues and total revenue. App. 217a-218a, ¶¶ 53, 56.

For example, in 1995-96, for two school districts with the same level of poverty (as measured by Aid to Families with Dependent Children), the school district with higher minority enrollment received $52.88 less Commonwealth treasury revenues per pupil for each increase of 1% in minority enrollment. App. 218a, ¶ 55. In 1990-91, the School District "received 17.2% less [per child in Commonwealth treasury revenues] than the average of school districts with the same poverty rate." App. 217a-218a, ¶ 53. By 1995-96, this disparity had risen to 33.1% per child. *Id.*

Between 1992 and 1996, total revenues to school districts with 50% or more white students increased by a weighted average of $776 per pupil, while the increase to the School District was only $84 per pupil and the increase to districts with more than 75% minority enrollment was only $149 per pupil. App. 218a, ¶ 56.

These intensifying levels of racial discrimination in funding, and the consequent harm to Respondents, arise not from some inadvertent statistical anomaly, but from Petitioners' funding decisions made, over time, with prior knowledge of those racially discriminatory conse-

quences. App. 215a, ¶ 47; 219a, ¶¶ 59, 60; 223a, ¶ 73; 225a, ¶ 80.

Because the Executive Petitioners receive federal funds, § 601 of Title VI of the Civil Rights Act of 1964 prohibits them from subjecting any person to racial discrimination in public education in Pennsylvania. 42 U.S.C. § 2000d (App. 57a). The United States Department of Education regulation adopted to "effectuate the provisions of section" 601, 42 U.S.C. § 2000d-1 (App. 57a), prohibits providing different services on the basis of race, subjecting an individual to segregation, or utilizing "criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race," or which defeat or "substantially impair[] accomplishment of the objectives of the program" for individuals of a particular race. 34 C.F.R. § 100.3(b)(1)(ii),(iii), (2) (App. 59a-60a).

Count I of the Complaint claims that these funding policies and practices violate the Department of Education Title VI regulation in four respects. First, they create a racially discriminatory effect in violation of 34 C.F.R. § 100.3(b)(2):

> The Commonwealth['s] funding policies and practices wrongfully discriminate against African-American, Hispanic, Asian and other minority students in the School District by utilizing criteria and methods that have had the foreseeable effect of subjecting such students to discrimination because of their race, color, or national origin, by disproportionately denying them necessary support for their education, in violation of the Title VI implementing regulations applicable to federal education programs.

App. 223a, ¶73.

Second, the state-established funding system violates the regulatory prohibition against providing "any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from

that provided to others under the program" on the basis of race, since it does not provide "educational opportunity equal to that which children who live in predominantly white school districts receive." App. 222a-223a, ¶¶ 70 (*quoting* 34 C.F.R. § 100.3(b)(1)), 73. Third, the funding system violates the regulatory prohibition on subjecting "an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program," App. 222a, ¶ 70 (*quoting* 34 C.F.R. § 100.3(b)(1)), because Petitioners' "funding policy and practices have the foreseeable, racially discriminatory effect of further isolating the Student Plaintiffs, the School District, and the City by race in the Philadelphia metropolitan area, and of impairing the School District Plaintiffs' ability to provide a thorough and efficient educational system which is racially non-discriminatory and racially non-segregated." App. 223a, ¶ 75. Finally, the objectives of specific federal education programs for which Pennsylvania receives federal funds, "are defeated or substantially impaired in Philadelphia by the Commonwealth['s] challenged racially discriminatory funding policies and practices," in violation of 34 C.F.R. § 100.3(b)(2). App. 222a, ¶ 70; App. 224a, ¶ 77.

In Count II of the Complaint, the student and organization plaintiffs assert a second claim, which goes almost unmentioned by Petitioners. The claim arises under the Civil Rights Act of 1871, 42 U.S.C. § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Because the rights secured by Title VI and the Department of Education regulations are rights, privileges, and immunities secured by the laws of the United States, Pennsylvania officials responsible for the funding of public schools in a manner that violates their obligations under the Title VI regulation are liable in a suit in equity for injunctive relief under § 1983.

The Prayer for Relief requests only declaratory and prospective injunctive relief, prohibiting Petitioners, if they wish to accept future federal funds, "from continuing to implement a system of funding public schools that discriminates against . . . minority children enrolled in" the School District "and that thereby harms" all Respondents. App. 226a-227a.

B. The District Court Decision. The District Court dismissed both Counts of the Complaint with prejudice pursuant to Rule 12 of the Federal Rules of Civil Procedure, on the motions of both groups of Petitioners. App. 32a-56a. On Count I, the District Court concluded that Respondents failed to state a claim for "disparate impact" under the Title VI regulation, because the District Court characterized the Complaint as alleging discrimination based on poverty rather than race and found no allegation "that the School District receives any less Commonwealth funding than other school districts." App. 52a-53a. The District Court further ruled that the School District and City plaintiffs lack "standing" because they are not "persons" protected by Title VI. App. 42a-44a.

The Court next dismissed Count II solely on the ground that the Executive Petitioners named as defendants are not "persons" covered by § 1983, even though the case is one seeking prospective injunctive relief. App. 39a-42a.

The District Court rejected numerous other arguments offered by Petitioners here. In particular, the Court declined to invalidate the Department of Education's

Title VI regulation or to deny a private right of action for prospective injunctive relief to enforce the regulation in federal court. App. 46a-48a. The Court did not address the Legislative Petitioners' contention, raised again before this Court, that the injury alleged in the Complaint is not "redressable" because entities other than Pennsylvania play a role in funding decisions for the public schools. *See* Leg. Pet. i, Question Presented 3. No motion before the District Court raised the third issue presented here by the Executive Petitioners, whether a "generally worded regulation" can support a challenge to discriminatory school funding. Ex. Pet. i, Question Presented 3.

C. The Third Circuit's Ruling. The Third Circuit reversed the District Court's dismissal of both Counts of the Complaint. App. 1a-31a. The unanimous Third Circuit panel concluded that the District Court had "mischaracterized" the Complaint as being "based on economic circumstances rather than race." App. 13a. The Third Circuit held that the Complaint was sufficient to put Petitioners on notice "that less educational funding is provided by the Commonwealth to school districts attended by most non-white students in Pennsylvania than to school districts attended by most white students . . . [and] that the funding disparities injure non-white students by limiting their educational opportunities." *Id.*

Without opining on the merits, the Court concluded that "the plaintiffs should be given the opportunity to offer evidence in support of their claims." *Id.* In so doing, the Court of Appeals recognized the factual complexity of the funding system and the need for factual development in this case:

> We note that there are many components to the Commonwealth's formula, which the plaintiffs allege was changed each year between 1991-92 and 1996-97. Indeed, even after requesting and receiving supplemental briefs from the parties concerning that

> formula, we remain unable to discern with precision the basis on which the Commonwealth funds the school districts. It may be that some of the necessary information will be forthcoming from the defendants' files and employees during discovery.

App. 16a. In an observation ignored here by Petitioners, the Third Circuit also recognized that dismissal was not appropriate because Respondents' allegations of Petitioners' prior knowledge of the racially discriminatory consequences of their actions justified further factual development as to Petitioners' intent. App. 9a-10a n.1.

The Court of Appeals then rejected, as the District Court had before, Petitioners' argument that there is no private right of action to seek prospective injunctive relief to enforce the Title VI regulations. App. 16a-22a. The Court analyzed the issue under well-established Third Circuit precedent that incorporates the test prescribed by this Court in *Cort v. Ash*, 422 U.S. 66 (1975), to determine when a private right of action may be implied under a federal statute. *See Angelastro v. Prudential-Bache Secs., Inc.*, 764 F.2d 939 (3d Cir.), *cert. denied*, 474 U.S. 935 (1985). The Court found the requirements of the *Cort* and *Angelastro* tests satisfied, and noted that its decision was "in keeping with the decisions of the other courts of appeals that have addressed this issue," App. 20a, since the Eleventh Circuit has held that a private right of action exists under regulations enforcing Title VI, *Burton v. City of Belle Glade*, 178 F.3d 1175 (11th Cir. 1999), and other Courts of Appeals have reached the merits of such claims. App. 18a-21a.

The Third Circuit rejected the argument, repeated here, Ex. Pet. 8-14 and Leg. Pet. 6-10, that the Title VI regulations are barred under *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976), because they "create federal law." App. 21a. The Court of Appeals cited this Court's pronouncements on the Title VI regulations and numerous other federal cases that have implied private rights

of action to enforce regulations "under similar circumstances," including under Title IX. App. 21a-22a. The court explained:

> In each of these cases, the analysis as to whether there was a private right of action to enforce the regulation at issue would not have been necessary if the regulation did not go further than that statute; the private right of action under the particular statute alone would have sufficed.

App. 22a.

The Third Circuit also rejected the District Court's notion that state officials acting in their official capacities are not "persons" within the meaning of § 1983, a proposition that no party defended on appeal. App. 22a-23a. [2]

Finally, the Court rejected the Legislative Petitioners' argument that Respondents, including the parents of children who attend the School District, lack standing because the injury of which they complain is not redressable by the injunction they seek:

> The legislative defendants err in assuming that the injury in this case consists of a lack of adequate funding. Here, the plaintiffs complain that non-white school children in Pennsylvania receive less favorable treatment than their white counterparts because the state funds the school districts most of them attend at a lower level than it does the school districts most white school children attend. A court order directing the state to equalize funding between these

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[2] The Third Circuit also addressed and rejected Petitioners' argument for affirming the dismissal of the § 1983 claim. App. 24a-27a. Petitioners had advanced in the Third Circuit a different ground for affirming the dismissal of the § 1983 claim based on *Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n*, 453 U.S. 1 (1981). Petitioners have not renewed that issue here.

> school districts would redress this comparative injury, even if other sources of the school district's income were simultaneously reduced. We therefore conclude that the school children's injury is redressable by court order.

App. 28a (footnote omitted).

Petitioners sought neither rehearing by the panel nor rehearing *en banc*. They did not seek to stay the Third Circuit mandate, so the case is proceeding in the District Court.

REASONS FOR DENYING THE WRIT

Each Petition presents three questions. The first two questions in each Petition are the same: First, whether the regulation adopted under Title VI prohibiting discriminatory effects in programs receiving federal funds is authorized by Title VI; second, whether there is a private right of action for prospective injunctive relief to enforce the regulation. Each Petition raises a distinct third question. (Each group of Petitioners apparently could not even convince the other that there are "compelling reasons" for the Court to consider these issues.) The two Petitions accordingly present a total of four questions, considered seriatim below.

None of the four questions is appropriate for the Court's consideration. The Third Circuit's decision reverses dismissal of the Complaint under Rule 12 of the Federal Rules of Civil Procedure, and thus holds only that Respondents may proceed to discovery and proof of their claims. Except in extraordinary cases, this Court does not grant certiorari on a petition that seeks intervention before final judgment in the lower courts. *See Texas v. Hopwood,* 518 U.S. 1033 (1996) (opinion of Ginsburg, J., respecting the denial of the petition for certiorari); *Virginia Military Inst. v. United States*, 508 U.S. 946 (1993) (opinion of Scalia, J., respecting the denial of the petition for certiorari); *Brotherhood of*

Locomotive Firemen v. Bangor & Aroostok R.R, 389 U.S. 327, 328 (1967) (per curiam) ("because the Court of Appeals remanded the case, it is not ripe for review"); *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 257-259 (1916) (certiorari jurisdiction should be "exercised sparingly" and "except in extraordinary cases, the writ is not issued until final decree"); *American Constr. Co. v. Jacksonville, T. & K.W. Ry.*, 148 U.S. 372, 384 (1893) ("this court should not issue a writ of *certiorari* to review a decree of the Circuit Court of Appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause").

The wisdom of this Court's practice is well illustrated by this case, since the questions presented may never have to be reached by this Court. If Respondents prevail below on their § 1983 claim (Count II), resolution of the private right of action question would become unnecessary. If Respondents prevail under a provision of the Title VI regulation other than the provision challenged in the first question presented in the Petitions, that question would not have to be reached in this case. Moreover, the Third Circuit recognized that factual development of Respondents' allegations could result in a finding of intentional discrimination. App. 9a n.1, citing *Davis v. Monroe County Bd. of Educ.*, 119 S. Ct. 1661 (1999). Such a finding would avoid the need to resolve either of the two main issues, or any of the other questions presented.

Nor are there any extraordinary circumstances that justify an exception to the usual rule here. Petitioners seek rulings unsupported by any Court of Appeals and contrary to this Court's precedents. A denial of certiorari will not preclude Petitioners from renewing the questions presented if those issues remain in the case after final judgment. *See Virginia Military Inst.*, 508 U.S. 946 (opinion of Scalia, J., respecting the denial of the petition for certiorari) (denial of a petition before

final judgment "does not preclude [petitioner] from raising the same issues in a later petition, after final judgment has been rendered"); *Hughes Tool Co. v. Trans World Airlines, Inc.*, 409 U.S. 363, 365-366 n.1 (1973); *Hamilton-Brown Shoe Co.*, 240 U.S. at 257-259.

I. THE COURT SHOULD NOT TAKE THIS CASE TO REVIEW THE VALIDITY OF THE TITLE VI REGULATION PROHIBITING DISCRIMINATORY EFFECTS BECAUSE THE COMPLAINT ALLEGES FAR MORE THAN SUCH EFFECTS, THOSE FACTS SHOULD BE DEVELOPED THROUGH DISCOVERY AND PROOF, AND NO DISPUTE IN THE COURTS OF APPEALS CALLS FOR THIS COURT'S RESOLUTION.

1. The linchpin of Petitioners' attack on the Department of Education Title VI regulation is that a Complaint challenging a school funding system should not be permitted to proceed under a federal regulation prohibiting "disparate impact on a racial or ethnic basis, even if the impact is inadvertent." Leg. Pet. 3. *Accord,* Ex. Pet. 3. The Third Circuit found, however, that Respondents' allegations go far beyond inadvertent consequences (App. 13a-15a); the regulations themselves bar not just discriminatory effects, but also conduct that subjects children to racial segregation or substantially impairs the objectives of federally funded programs for children on the basis of race.

By repeating again and again that this case involves "unintentional disparate impacts on racial or ethnic groups," Leg. Pet. 7; Ex. Pet. 10, Petitioners isolate a single, incomplete aspect of the conduct actually alleged in the Complaint. Petitioners' funding policies have the foreseeable -- and foreseen -- consequence of discriminatorily funding public education and undermining educational opportunities on the basis of race. App. 215a, ¶ 47; 219a, ¶¶ 59, 60; 223a, ¶ 73; 225a, ¶ 80. The system for funding public education in Pennsylvania has

exacerbated segregation of African-American and other minority students in the Philadelphia area, App. 223a-224a, ¶¶ 73, 75, and has impaired the objectives of the federal programs that fund education in Philadelphia. App. 224a, ¶ 77. Count I alleges that Petitioners' conduct violates the Department of Education's Title VI regulation even apart from the provision quoted by Petitioners dealing with racially disparate "effect." App. 222a-225a. *See* 34 C.F.R. § 100.3(b)(1)(ii),(iii), (2); App. 59a-60a (barring federal fund recipients from, on the basis of race, color, or national origin, "[s]ubjectin[g] an individual to segregation or separate treatment," or utilizing criteria or methods of administration that "have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin").

2. As the Third Circuit recognized, App. 9a n.1, further proceedings will focus on applying the various provisions of the regulation to the facts as developed through discovery and proof. The Executive Petitioners attach more than 130 pages of Pennsylvania Statutes to their Petition, App. 64a-197a, and discuss the statutory scheme at length, Ex. Pet. 4-6, suggesting that the case cannot be resolved in their favor until the meaning and significance of these statutes is addressed. The present record, which consists of nothing more than the allegations of the Complaint, is a poor vehicle for testing the scope and validity of one provision of the regulation as applied to such complex facts.

3. Petitioners' portrayal oversimplifies to the point of distortion not just the facts and violations alleged in the Complaint, but the Title VI enforcement mechanism. Both Petitions argue that the Court should take this case to strike down the Department of Education's regulation enforcing Title VI because the regulation "prohibit[s] unintentional disparate impacts on racial or ethnic groups," while "Title VI of the Civil Rights Act of

1964 . . . prohibits only *intentional* racial or ethnic discrimination by recipients of federal funding." Leg. Pet. 7,6. *Accord*, Ex. Pet. 10. Petitioners misunderstand the combined statutory and regulatory design of Title VI. The Title VI regulations were required by a Congress that knew before enactment what such regulations would proscribe. The key compromise that emerged from one of the final markups of the bill that became the Civil Rights Act of 1964 was a mandate that federal agencies promulgate their own regulations for carrying out the general antidiscrimination clause in Title VI, rather than having Congress address through Title VI itself all the intricacies of what conduct would be prohibited. [3]

Secretary Celebrezze, of the Department of Health, Education and Welfare, which was responsible for drafting the original regulations, made clear to Congress that HEW, once given that authority, would take the position that "racial imbalance" -- language which at the time connoted "disparate impact" -- could prompt cut-off of federal funds by HEW. *See Civil Rights: Hearings Before Subcomm. No. 5 of House Comm. on Judiciary*, 88th Cong., 1st Sess. 1519 (1963) ("House Subcomm. Hearings") (testimony of Secretary Celebrezze). Congress developed and passed § 602 of the Act, 42 U.S.C. § 2000d-1, which directs each federal department and agency "to effectuate the provisions of section 2000d [§ 601] of this title . . . by issuing rules, regulations, or orders of general applicability which shall be consistent with the achievement of the objectives of the statute authorizing the financial assistance. . . ." App. 57a. Such regulations are not effective until approved by the President. *Id.* Congress

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[3] *See Civil Rights: Hearings on H.R. 7152 Before the House Comm. on the Judiciary*, 88th Cong., 1st Sess. 2652, 2740, 2765-66 (1963) (Attorney General Kennedy); Charles F. Abernathy, *Title VI and the Constitution: A Regulatory Model for Defining "Discrimination,"* 70 Geo. L. J. 1, 3, 22 (1981).

thus well knew when it passed Title VI that the regulations would address discriminatory "effects," and not only purposeful racial animus.

The regulations developed by HEW as required by § 602 prohibited discriminatory impacts in federally funded programs and were put in place in 1964, the same year Congress passed Title VI. *See* 45 C.F.R. § 80.3 (1964). Comparable regulations have been adopted by over 40 cabinet departments and federal agencies. App. 9a. Seven Presidents -- President Johnson and each of his successors -- have approved such regulations.

Petitioners concede that the validity of the Title VI regulations is a question solely of statutory authority, not constitutional law. Ex. Pet. 1. Everything about Congressional conduct since the regulations were adopted throughout the federal government supports the conclusion that Congress has acquiesced in them. Congress has amended Title VI six times since 1964 without disapproving the regulations. [4] Congress also has passed statutes modeled on Title VI, including a directive for agency regulation to enforce a general ban on discrimination [5] and, in a 1978 statute, a requirement of rules "similar to those established and in effect under [T]itle VI . . . of the Civil Rights Act of 1964." [6] It is fanciful to think that Congress would have built so solidly on the

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[4] *See* Pub.L. 89-750, Title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub.L. 90-247, Title I, § 112, Jan. 2, 1968, 81 Stat. 787; Pub.L. 91-230, § 2, Apr. 13, 1970, 84 Stat. 121; Pub.L. 96-88, Title III, § 301(a)(1), Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub.L. 99-506, Title X, § 1003, Oct. 21, 1986, 100 Stat. 1845; Pub.L. 100-259, § 6, Mar. 22, 1988, 102 Stat. 31.

[5] *See* Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681-82; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

[6] The Outer Continental Shelf Lands Act Amendments of 1978, 43 U.S.C. § 1863.

Title VI foundation if it had not intended the scope of the resulting regulations.

4. This Court also has recognized that the overall Title VI enforcement scheme attacks conduct on the full spectrum from purposeful discrimination motivated by racial animus to discriminatory effects, and in so doing has recognized the validity of the Title VI regulations. In *Guardians Association v. Civil Service Commission,* 463 U.S. 582 (1983), the Court considered a claim that an entry-level employment test had a disparate impact that disadvantaged Hispanic and African-American candidates for the New York City Police Department, in violation of Title VI. The police department received federal funds and thereby bound itself to abide by Title VI and its regulations. *See* 463 U.S. at 642 (Stevens, J., dissenting). At trial, plaintiffs failed to show intentional discrimination, but established "disproportionate impact of the entry-level test on racial minorities." 463 U.S. at 598 (opinion of White, J.). The Court ruled that compensatory relief is available in private Title VI lawsuits in federal court only where discriminatory intent is shown, 463 U.S. at 584 (opinion of White, J.), and recognized the validity of Title VI regulations that, as a condition of federal funding, proscribe conduct with a racially disparate impact. Justice White took care at the end of his opinion announcing the judgment of the Court to identify the following as one of the two propositions adopted by a majority of the Justices:

> [Five Justices] form a majority for upholding the validity of the regulations incorporating a disparate-impact standard.

436 U.S. at 607 n.27. Just two years later, in a unanimous opinion, this Court explained that its earlier decision in *Guardians* "*held* that actions having an unjustifiable disparate impact on minorities could be redressed through agency regulations designed to implement the purposes of Title VI." *Alexander v. Choate,* 469 U.S. 287, 293 (1985) (emphasis added). *Alexander*

and *Guardians* both were decided before the two most recent amendments to Title VI. *See* note 4, *supra*. Congress did not disturb the conclusion that the regulations are valid.

5. Not a single case has declared Title VI regulations invalid, so Petitioners can point to no Circuit split on the issue. Moreover, the validity of the Department of Education regulation is supported by this Court's standard analysis of the scope of regulatory authority. The regulations are reasonably designed to meet the objectives of the enabling statute. *See United States v. O'Hagan*, 521 U.S. 642, 672-673 (1997); *Mourning v. Family Publications Serv., Inc.*, 411 U.S. 356, 369 (1973). The purpose of the enabling legislation is clear: Congress' core concern in adopting Title VI was to eliminate racial discrimination in programs that receive federal funds, in order to avoid federal subsidization of such conduct and to give its victims meaningful protection. *See Cannon v. University of Chicago*, 441 U.S. 677, 704 (1979). Issues of racial segregation and inequitable educational opportunity were among the most pressing problems of racial injustice that Congress intended to attack in the Civil Rights Act of 1964. House Subcomm. Hearings at 928-930 (message from the President of the United States).

It is undisputed here that Congress has the power under the Spending Clause to condition future grants of federal money on a recipient's refraining from certain conduct, even though such conduct may otherwise be neither illegal nor unconstitutional. *See Rust v. Sullivan*, 500 U.S. 173, 195 n.4 (1991) (regulations prohibiting Title X projects from engaging in abortion counseling are constitutional); *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) ("Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory *and administrative*

directives") (internal citation omitted) (emphasis added). Where a regulation effectuating such a valid congressional purpose goes beyond the literal language of the statute, it is valid as well if it is a "prophylactic measure" designed to meet the specific objectives of the statute. *O'Hagan*, 521 U.S. at 673 (SEC regulations may prohibit non-fraudulent acts if regulations are reasonably designed to prevent fraudulent acts and practices). *See also City of New York v. FCC*, 486 U.S. 57, 64 (1988) (affirming FCC preemption of state law as valid when done to avoid frustration of statute's purpose); *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 382 (1969) (sustaining validity of FCC regulations that go beyond statutory mandates where statutory objectives could be circumvented but for the regulations). In analyzing whether regulations are reasonably designed to meet statutory objectives, this Court "must accord the [agency's] assessment 'controlling weight unless [it is] arbitrary, capricious, or manifestly contrary to the statute.'" *O'Hagan,* 521 U.S. at 673 (*quoting Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)).

The Court will not disturb a regulatory provision "unless it appears from the statute or legislative history that the accommodation is not one that Congress would have sanctioned." *City of New York*, 486 U.S. at 64 (quotation omitted).[7] Thus, in addition to the reasons dis-

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[7] *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976), relied on by Petitioners for its holding that a particular rule promulgated by the Securities and Exchange Commission exceeded the authority of the Securities Exchange Act of 1934, is inapposite because this Court's holding was based in part on its conclusion that the rule was incompatible with the agency's own administrative history and specific language in the legislation. *Id.* at 212-213 & n.32. In this case, however, federal agencies that adopted the HEW regulations, including the Department of Education here, never have wavered from their position that their regulations prohibit practices that have a discriminatory impact. By not defining the term "discrimination" in § 601 of Title VI, and by requiring regulations to "effectuate" that provision in § 602,

cussed above concerning the interlocutory nature of this case as it comes to the Court, this Court should not review the first question presented in both Petitions because Congress knew there would be regulations reaching racially disparate impact when it directed in § 602 that agencies adopt regulations, and such regulations serve the goal of the statute to stop federal financial support for discrimination. [8]

II. THE ISSUE OF WHETHER A PRIVATE ACTION MAY BE BROUGHT SEEKING A PROSPECTIVE INJUNCTION TO ENFORCE TITLE VI REGULATIONS IS NOT WELL-SUITED FOR RESOLUTION IN THIS CASE.

The Petitioners' argument that this Court should take this case to decide the question whether there is a private right of action to enforce Title VI regulations is grounded in the fact that the Court granted certiorari to review that issue in *Seif v. Chester Residents Concerned for Quality Living*, 118 S. Ct. 2296, *writ dismissed as moot*, 119 S. Ct. 22 (1998). This case, however, is not *Chester Residents*.

Chester Residents involved a complaint which relied solely on a private right of action based on the Title VI regulations. [9] Here, however, Count II is based in 42

Congress intended that the agencies have room to develop a definition. *See United States v. Haggar Apparel Co.*, 526 U.S. 380, 119 S. Ct. 1392, 1399 (1999).

[8] Justice Stewart applied this reasoning in his concurring opinion in *Lau v. Nichols*, 414 U.S. 563, 569-571 (1974), to consider "[t]he critical question . . . whether the regulations and guidelines promulgated by HEW go beyond the authority of § 601 [of Title VI]." *Id.* at 571 (Stewart, J., concurring). The Title VI regulations were valid, Justice Stewart concluded, because they were "'reasonably related to the purposes of the enabling legislation.'" *Id.* (*quoting Thorpe v. Housing Auth. of City of Durham*, 393 U.S. 268, 280-281 (1969)).

[9] The complaint in *Chester Residents* is reproduced in the Joint Appendix filed in this Court's Docket Number 97-1620.

U.S.C. § 1983. App. 225a. This case will go forward and could be decided in any event on Count II, regardless of whether there is a private right of action to bring Count I.

Moreover, the *Chester Residents* plaintiffs did not specifically allege violations of the further provisions of the Environmental Protection Agency regulations that prohibit federal fund recipients from providing differential service on the basis of race, subjecting individuals to racial segregation, and impairing the objectives of a federally funded program for participants on the basis of race. 40 C.F.R. § 7.35. The comparable provisions in the Department of Education regulation all have been pleaded here. App. 222a-224a.

This case, unlike *Chester Residents*, is not limited to the issue of whether a plaintiff should be permitted to pursue a claim under Title VI regulations simply by alleging a discriminatory effect. Rather, this case further involves allegations that Petitioners acted with full knowledge of a racially disparate impact. App. 215a, ¶ 47; 219a, ¶¶ 59, 60; 223a, ¶ 73; 225a, ¶ 80. When this case reaches judgment, it thus may not even raise the more narrow question of the availability of a private right of action to challenge pure discriminatory effects.

This Court's jurisprudence, moreover, has developed since *Chester Residents* in a way that supports the Third Circuit's conclusion that a private right of action exists. Specifically, the Court recently endorsed the analytic framework used by Justice White in *Guardians*. In *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 118 S. Ct. 1989 (1998), the Court held that a private right of action for money damages against a school district will not lie under Title IX of the Education Amendments of 1972, by reason of a teacher's sexual harassment of a student, in the absence of actual knowledge of the conduct on the part of the school district. In describing the contours of private rights of

action to enforce Title IX, the Court, citing to Justice White's opinion in *Guardians,* relied on the contractual framework by which federal fund recipients under Title IX, as under Title VI, [10] accept "an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds." 118 S. Ct. at 1997. Under that analysis, knowledge of the harassment by the officials of the entity receiving federal funds is a critical consideration in whether damages are available for an alleged Title IX violation. 118 S. Ct. at 1998.

The Court in *Gebser* recognized, however, that these concerns are absent in cases seeking prospective injunctive relief: "Justice White's opinion announcing the Court's judgment in *Guardians* . . . concluded that the relief in an action [under Title VI] alleging unintentional discrimination should be prospective only, because where discrimination is unintentional, 'it is surely not obvious that the grantee was aware that it was administering the programs in violation of the [condition].' 463 U.S. at 598." *Gebser*, 118 S. Ct. at 1998.

Petitioners never mention *Gebser*, or acknowledge the importance of this principle. Respondents seek only prospective injunctive relief, to require future compliance with the regulation. The Legislative Petitioners thus confuse when they warn that Title VI's abrogation of Eleventh Amendment sovereign immunity is somehow implicated here. Leg. Pet. 22-23. No such issue ever will be presented in this case, because no damages are sought.[11] Under *Gebser*, the analysis of private

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[10] "[Title IX] was modeled after Title VI of the Civil Rights Act of 1964, . . . which is parallel to Title IX except that it prohibits race discrimination, not sex discrimination, and applies in all programs receiving federal funds, not only in education programs." *Gebser*, 118 S. Ct. at 1997 (citations omitted).

[11] The District Court held that the Eleventh Amendment is no bar to this case because the Complaint seeks only prospective

rights of action is aligned with the remedy sought. A suit for a prospective injunction to enforce federal regulations is far less intrusive than a damages case; this Complaint simply asks that a federal fund recipient be required to do in the future what it already has agreed to do. Leaving the Third Circuit's decision to stand while this case proceeds thus does not risk a flood of damages cases or threaten the role of the states in the federal system, who have been on clear notice of this requirement since 1964. *Cf.* Leg. Pet. 22.

Petitioners urge that such determinations are in the first instance for an expert federal agency, Leg. Pet. 13, Ex. Pet. 16, but they fail to recognize that administrative proceedings need not be exhausted before a suit may be brought under Title VI or Title IX. *See Cannon*, 441 U.S. at 706-708 nn.41 & 42. One of the key reasons the Court reached that conclusion in *Cannon* was that the United States candidly admitted that it could not enforce Title IX alone. *Id.* at n.42. The same is true here. The United States has urged in this case that private suits such as this one "are critical to ensuring optimal enforcement of the mandate of Title VI and the regulations." Brief of the United States as Amicus Curiae (filed February 17, 1999, 3d Cir. Nos. 98-2096, 98-2157) at 1.

Every Court of Appeals that has considered the question has permitted litigants to proceed under Title VI regulations. Petitioners are wrong when they assert that "this case is now the only circuit case to explicitly hold that private plaintiffs may enforce Section 602 disparate-impact regulations." Leg. Pet. 13 n.13. *See also* Ex. Pet. 16. As the Third Circuit observed:

> The Eleventh Circuit has explicitly "recognized an implied private right of action to enforce the regula-

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injunctive relief, which is permitted against state officials under *Ex parte Young*, 209 U.S. 123 (1908). App. 48a-51a. Petitioners did not raise that issue on appeal.

> tions promulgated under section 602 of Title VI," thereby permitting private plaintiffs to "obtain injunctive or declaratory relief by showing, *inter alia*, that the challenged action has a 'disparate impact on groups protected by the statute, even if those actions are not intentionally discriminatory.'" *Burton v. City of Belle Glade*, [178 F.3d 1175 (11th Cir. 1999)] (*quoting Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993)); *see also Georgia State Conference* [*of Branches of NAACP v. Georgia*, 775 F.2d 1403, 1417 (11th Cir. 1985)].

App. 20a.

The Third Circuit also cited cases from four other circuits that "reached the merits of disparate impact claims brought by individual plaintiffs under the Title VI regulations," App. 20a, although without explicitly conducting a private right of action analysis. *See Villanueva v. Carere*, 85 F.3d 481, 486-487 (10th Cir. 1996); *City of Chicago v. Lindley*, 66 F.3d 819, 827-830 (7th Cir. 1995); *Larry P. by Lucille P. v. Riles*, 793 F.2d 969 (9th Cir. 1984); *New York Urban League, Inc. v. New York*, 71 F.3d 1031 (2d Cir. 1995). *Accord, Ferguson v. City of Charleston, South Carolina*, 186 F.3d 469, 480 & n.10 (4th Cir. 1999) (reviewing on the merits a "Title VI disparate impact claim").[12] Private actions have been permitted to proceed not only under Title VI regulations but under other federal regulations as well. App. 21a-22a, citing *Lowrey v. Texas A&M Univ. Sys.*, 117 F.3d 242 (5th Cir. 1997) (Department of Education regulations under Title IX); *Robertson v. Dean Writter Rey-*

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[12] The Legislative Petitioners are incorrect that they are somehow deprived of the opportunity to present affirmative defenses in such an action. Leg. Pet. 23 n.18. Courts considering these cases routinely allow a defendant to respond to a prima facie case of racially disparate impact with a showing of "substantial legitimate justification." *Elston*, 997 F.2d at 1412. *Accord, Ferguson*, 186 F.3d at 480; *New York Urban League*, 71 F.3d at 1036.

nolds, Inc., 749 F.2d 530 (9th Cir. 1984) (Securities and Exchange Commission Rule 10b-16).

There simply is no split in the Circuits on the availability of prospective injunctive relief in federal court to enforce the Title VI regulations. No Court of Appeals has agreed with Petitioners' position, nor did either court below. The Legislative Petitioners also are incorrect in arguing that because Courts of Appeals describe in different terms the test used to determine whether a private right of action exists to enforce a federal regulation, a Circuit split exists that should be resolved by this Court. Leg. Pet. 14-17. That several Circuits have used differently worded analyses to reach the same conclusion does not constitute a Circuit split. Robert L. Stern, *et al.*, *Supreme Court Practice* 167 (7th ed. 1993) ("there must be a real or 'intolerable' conflict on the same matter of law or fact, not merely an inconsistency in dicta or in the general principles utilized").

Because, unlike *Chester Residents*, this case does not present the private right of action question as a stand-alone, dispositive issue, and because the Third Circuit was correct in any event (particularly considering the subsequent teaching of *Gebser*), certiorari should not be granted to review question two in the Petitions.

III. THE EXECUTIVE PETITIONERS' "GENERALLY WORDED REGULATION" QUESTION IS NOT WORTHY OF CERTIORARI.

In an argument not made to the District Court, Executive Petitioners suggest that subjecting their school funding scheme to scrutiny under a long-established federal regulation that bans racial discrimination raises "serious federalism concerns." Ex. Pet. 27. Petitioners seem to believe that Congress was not explicit enough in expressing its intent that the Department of Education should adopt a regulation ensuring that those who accept federal funds for their public school programs do not

administer those programs in a manner which discriminates against persons on the basis of race. Because of the alleged "generality" of the blanket prohibition on discrimination in both Title VI and the implementing regulation, Petitioners would have the Court insulate Petitioners' actions from challenge by both private parties and government agencies.

No principle of federalism justifies exempting public school education from the reach of the federal civil rights laws based on race. Petitioners' argument is built upon a misapplication of *Alexander* and *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973), neither of which involved racial discrimination.[13] The single footnote sentence in *Alexander*, which refers to "generally worded regulations" and is the basis of Petitioners' argument, states that in the absence of explicit statutory language to the contrary, this Court would not read into § 504 of the Rehabilitation Act of 1973 the requirement that states conduct a "Handicapped Impact Statement" similar to the "environmental impact statement" required under the National Environmental Policy Act. *Alexander*, 469 U.S. at 298-299, 307-308 n.32. No such "NEPA statement" requirement is sought in this case.

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[13] Petitioners support their claim that the Third Circuit's decision presents a threat to federalism with a "suggest[ion]" in an amicus brief filed by the United States in the district court that the regulation may require state officials to consider the special needs of urban school districts. Ex. Pet. 26. However, as the Third Circuit correctly observed, this case does not involve an attempt to obtain additional funding based on factors "external to the state subsidy program." App. 14a. Rather, this case involves a straightforward claim of racial discrimination inherent in the funding formula itself. *Id.*

IV. THE LEGISLATIVE PETITIONERS' CONTENTION THAT THE INJURY CLAIMED IS NOT REDRESSABLE MISCONSTRUES THE INJURY AND SHOULD NOT BE HEARD.

The Legislative Petitioners claim that Respondents' injury is not redressable because, if Pennsylvania were ordered to provide more money to the School District, local or federal sources might decide to decrease their contributions, thus leaving Respondents in the same position. Leg. Pet. 25-26. This argument misconstrues Respondents' injury. As the Third Circuit recognized, the injury alleged is not lack of adequate funding; rather, it is "that non-white school children in Pennsylvania receive less favorable treatment than their white counterparts because the state funds the school districts most of them attend at a lower level than it does the school districts most white school children attend." App. 28a. The injury is redressable because it will be remedied when Petitioners comply with the Title VI regulations and end differential treatment based on race. *Id.* *ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989), the case Legislative Petitioners cite to support their argument, Leg. Pet. 26-28, is inapposite because it presented a claim of taxpayer standing, not an allegation of discrimination by the named defendants.

In circumstances more similar to this case, this Court has refused to speculate about hypothetical future events that could affect the interests of the parties. *See, e.g.*, *Federal Election Comm'n v. Akins*, 524 U.S. 11, 118 S. Ct. 1777, 1786-87 (1998) (injury was redressable although Federal Election Commission might later reach same result, noting "we cannot know that the FEC would have exercised its prosecutorial discretion in this way"); *United States v. Nixon*, 418 U.S. 683, 695-697 (1974) (claim was justiciable and Special Prosecutor had standing even though the President could fire the prosecutor). Indeed, in this case, the Complaint alleges and the Legislative Petitioners agree that the overall system

of public education, including the scope of local funding, is the State's system. App. 215a, ¶ 47; Leg. Pet. 2. That proposition must be accepted at this stage of the case; if Petitioners wish to contest it, the district court is the proper place to do so.

In any event, the Legislative Petitioners' redressability theory proves far too much, for under it any recipient of federal funds could engage in intentionally, blatantly racist behavior by providing a diminished program to minorities on the basis of race so long as the program has other funding streams that arguably could be cut to keep the program diminished. Redressability, when properly applied, is a shield to prevent court intervention where there is no case or controversy. Petitioners, however, would have it become a barrier to enforcement of a binding federal regulation as long as they can speculate about every conceivable decision of other actors which could eventually affect total funding under the state's system.

CONCLUSION

For all of the foregoing reasons, both Petitions for a writ of certiorari should be denied.

Respectfully submitted,

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In The

Supreme Court of the United States

MATTHEW J. RYAN, ROBERT C. JUBELIRER, JESS M. STAIRS and JAMES J. RHOADES,

Petitioners,

vs.

DAVID POWELL, *et al.*,

Respondents.

and

THOMAS RIDGE, Governor of the Commonwealth of Pennsylvania, *et al.*,

Petitioners,

v.

DAVID POWELL, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF AMICI CURIAE OF THE STATES OF ALABAMA, NEW JERSEY, NEVADA AND UTAH IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI CURIAE

Amici Curiae State of Alabama and three other States submit this brief in support of Petitioners because they have been, and increasingly are being, made defendants in actions premised on the existence of an implied private right of action for disparate-impact claims under Title VI of the Civil Rights Act of 1964. As explained in greater detail below, such claims do not arise under the statute but, rather, under agency regulations. Only two Terms ago, this Court granted certiorari in *Seif v. Chester Residents Concerned for Quality Living*, No. 97-1620, to resolve whether Congress authorized such a private right of action. The *Chester Residents* parties suggested mootness, however, and certiorari was dismissed, forestalling a decision on this very important question. That dismissal of certiorari has not stopped the lawsuits against the States.

As the Ryan Petitioners note (Ryan Pet. 7), courts have issued decisions in cases that involve Title VI-based disparate-impact attacks on a wide variety of public policies. Among the recent such cases in which States were defendants are:

- The decision below, in which the plaintiffs alleged that Pennsylvania's system for funding public education had a disparate impact on racial minorities. *Powell v. Ridge*, Ryan Pet. App. 1a-34a. *See also Flores v. State of Arizona*, 48 F. Supp. 2d 937 (D. Ariz. 1999) (challenge to Arizona education funding system); *Cherokee Robinson v. Kansas*, No. 99-1193-JTM (D. Kan.) (pending challenge to Kansas' education funding system).

- A claim that the siting of a waste-water treatment facility had a disparate racial impact. *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925 (3d Cir. 1997), *vacated and remanded with instructions to dismiss as moot*, 119 S. Ct. 22 (1998);

- A claim that Alabama violates Title VI by administering drivers license tests only in English. *Sandoval v. Hagan*, 7 F. Supp. 2d 1234 (M.D. Ala. 1998), *app. pending*, No. 98-6598 (11th Cir.);

- A disparate-impact challenge to the siting of a state highway project. *Bryant v. New Jersey Dep't of Transportation*, 987 F. Supp. 343 (D.N.J. 1998), *vacated in part*, 998 F.2d 438 (D.N.J. 1998);

- A pending disparate-impact challenge to a State's high-school exit examination. *GI Forum v. Texas Education Agency*, Civil Action No. SA-97-CA-1278-EP (W.D. Tex. July 27, 1999).

- A challenge to California's Proposition 227, an initiative that replaced bilingual education programs with programs designed to teach students with limited English proficiency in the English language. *Valeria G. v. Wilson*, 12 F. Supp. 2d 1007 (N.D. Cal. 1998).

These cases show that the concern this Court expressed in *Washington v. Davis*, 426 U.S. 229, 248 (1976), that disparate impact claims would threaten "a whole range of tax, welfare, public service, regulatory, and licensing statutes," is not misplaced. *See also Hernandez v. New York*, 500 U.S. 352, 374 (1991) (O'Connor, J., with Scalia, J., concurring in the judgment) (quoting *Washington v. Davis*).

The Third Circuit's decision not only raises a host of practical difficulties for the States, it has important federalism implications. The decision – and similar ones by several other federal courts of appeal – is inconsistent with the contractual theory of Spending Clause grants announced by this Court and permits the abrogation of States' Eleventh Amendment immunity based on rights created solely through agency regulations. The States have an abiding interest in ensuring that, to the extent the federal government can impose liability and damages remedies upon States, this be done by Congress rather than by federal agencies.

Accordingly, the *amici* States respectfully submit this brief in support of the Petitioners. This Court should grant the petitions to address the issue it agreed to review in *Chester Residents* and should close a loophole that is being exploited to the States' detriment.

ARGUMENT

PRIVATE DISPARATE-IMPACT CLAIMS ARE NOT AUTHORIZED BY TITLE VI AND IMPOSE SERIOUS FEDERALISM COSTS UPON THE STATES

Petitioners present several questions that are of the first order of magnitude. This amicus brief will address only one of those questions: whether there is an implied private right of action to enforce the disparate-impact regulations promulgated under Title VI. That question is mooted, of course, if the Court holds (as Petitioners request) that those regulations are invalid. If, however,

the Court chooses not to address the validity of the regulations or expressly upholds them, the existence *vel non* of a private right of action for disparate-impact claims becomes critically important. As shown below, there is no basis upon which to hold that Congress intended to subject States to private disparate-impact actions pursuant to Title VI. Moreover, serious federalism problems are raised if federal agencies are permitted to impose new conditions on States in Spending Clause programs and subject States to private actions for conduct that Congress has not addressed.

A. Title VI Does Not Allow for the Implication of a Private Right of Action for Disparate-Impact Claims.

In *Cort v. Ash*, 422 U.S. 66, 78 (1975), the Court cited four factors relevant in determining whether an implied private right of action exists: (1) whether the statute creates a federal right in favor of the plaintiff; (2) whether there is any legislative intent to create or deny such a remedy; (3) whether it is consistent with the purposes of the legislative scheme to imply such a remedy; and (4) whether the cause of action is one traditionally relegated to state law. Underlying all of these considerations is the fundamental question of "whether Congress intended to create a private right of action." *Middlesex County Sewerage Auth. v. National Sea Clammers Assn.*, 453 U.S. 1, 13 (1981). *See also Suter v. Artist M*, 503 U.S. 347, 364 (1992); *California v. Sierra Club*, 451 U.S. 287, 293 (1981).

Guiding the inquiry into congressional intent are separation of powers concerns and the need to take the

express terms of congressional enactments seriously. Thus, in *Gebser v. Lago Vista Independent School District*, 118 S. Ct. 1989, 1996 (1998), the Court noted that the inquiry "inherently entails a degree of speculation," and endeavored to "ensure that we do not fashion the parameters of an implied right of action in a manner at odds with the statutory structure and purpose." Evaluation of the structure and purpose of Title VI demonstrate that it would be error for this Court to imply a cause of action under the disparate impact regulations.

This Court has consistently held that Title VI prohibits only intentional discrimination by recipients of federal financial assistance, *see Alexander v. Choate*, 469 U.S. 287, 293 (1985); *Regents of Univ. of Calif. v. Bakke*, 438 U.S. 265, 287, 328-40 (1978), and courts have held that there is an implied private right of action to enforce that bar on intentional discrimination. *See Cannon v. University of Chicago*, 441 U.S. 677, 703 (1979). ("[W]e have no doubt that Congress . . . understood Title VI as authorizing an implied private cause of action for the prohibited discrimination.") The latter holding in no way resolves the question presented to this Court. It is one thing to find an implied private right of action to enforce a federal statute that prohibits unconstitutional conduct. *Cf. United States v. Fordice*, 505 U.S. 717, 732 n.7 (1992) ("[T]he reach of Title VI's protection extends no further than the Fourteenth Amendment.") It is a far different thing to find an implied private right of action to enforce agency regulations that vastly expand the liability imposed by the federal statute that authorizes their promulgation. *Cf.* 42 U.S.C. § 2000d-1 (Federal agencies are authorized and

directed to "effectuate the provisions of section 2000d . . . by regulation").

Agency regulations that prohibit disparate impact go beyond what Congress prohibited. While Congress prohibited only unconstitutional intentional discrimination in Title VI, the agency regulations bar conduct that is not unconstitutional. Evidence of disparate impact alone does not establish a constitutional violation. *See, e.g., Washington v. Davis*, 426 U.S. 229, 246 (1976). In addition, different states of mind are involved in that intentional discrimination requires a showing of discriminatory purpose, something that disparate impact does not. *See, e.g., Massachusetts v. Feeney*, 42 U.S. 256, 279 (1979) (" 'Discriminatory purpose' implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected . . . a particular course of action at least in part 'because of' not merely 'in spite of' its adverse effects upon an identifiable group.")

Simply put, if Congress expressed no intent as to disparate-impact claims, there is no basis upon which to find that Congress intended to allow a private right of action to enforce disparate impact claims. The fundamental difference between intentional discrimination, which is all that Congress prohibited, and disparate impact supports this conclusion.

This fairly obvious conclusion is further buttressed by the structure of Title VI. Section 602 of the Civil Rights Act of 1964 – under which the disparate-impact regulations were promulgated – establishes a comprehensive agency enforcement system. Agencies may enforce compliance with their regulations by "terminat[ing]" or

"refus[ing] to grant or continue . . . assistance" or by any other lawful means. 42 U.S.C. § 2000d-1. Termination of funding must follow an opportunity for hearing and notice to Congress, and does not become effective until thirty days after notice to Congress. *Id.* The creation of an agency remedy and the absence of any mention of a private right are powerful indications of Congress's intent. *See Gebser*, 118 S. Ct. at 1999 (presence of an express administrative remedy that includes notice to Title IX grantees makes it "unsound" to imply a judicial remedy based on absence of actual notice).

There are important structural differences between the agency remedies specified in Section 602 and private rights of action. Those private actions are not subject to the restraint imposed by Congressional oversight. When federal agencies are required to provide notice to Congress and wait for 30 days before acting, those agencies must make certain that any conditions they wish to impose on a recipient of federal funds conform to Congress's understanding of the law. In contrast, private plaintiffs are free to attempt to reengineer State policies without any such check. Congress, however, specified agency notice, but said nothing about private actions.

Implying a private right of action for disparate-impact claims also is inconsistent with the contractual nature of Title VI. This Court has explained that:

> The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the "contract." There can, of course, be no knowing acceptance if a State is

> unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. By insisting that Congress speak with a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation.

Pennhurst State School v. Halderman, 451 U.S. 1, 17 (1981) (internal citations and footnote omitted). More recently, in *Gebser*, this Court observed that the contractual theory of grants has "implications for our construction of the scope of available remedies." 118 S. Ct. at 1998. Among other things, funds are given to recipients for specific purposes. The obligations imposed as the result of private actions divert funds from those specified purposes, and the related costs may exceed the funding provided. *See Gebser*, 119 S. Ct. at 1999.

Congress most certainly has not spoken "with a clear voice" regarding disparate-impact claims and, more specifically, private rights of action to enforce such claims. To the contrary, this Court has concluded that Congress did not speak to disparate-impact claims at all. *See* cases cited *supra* at 5. If the test is what Congress envisioned the States' liability to private parties would be, once again the result is clear: there is no basis upon which to conclude that Congress "envisioned" States being subjected to private actions asserting that State programs have a disparate impact.

Likewise, this Court has neither expressly nor impliedly held that there is an implied private right of action

under the disparate-impact regulations. In particular, neither *Guardians Assn. v. Civil Service Comm'n of New York*, 463 U.S. 582 (1983), nor *Alexander v. Choate*, 469 U.S. 287 (1985), supports the implication of a private right of action to enforce the regulations. In *Guardians*, this Court affirmed the denial of compensatory relief to plaintiffs in a Title VI lawsuit, reaching two conclusions as it did so. First, seven members of the Court agreed that proof of discriminatory intent is required to establish a violation of Title VI. 463 U.S. at 607 n.1 (Opinion of Powell, J.). Second, five members of the Court joined "to form a majority for upholding the *validity* of the regulations incorporating a disparate impact standard." *Id.* at 607 n.27 (Opinion of White, J.) (emphasis added); *see also id.* at 584 n.2. In *Alexander*, the Court confirmed this reading of *Guardians*. 469 U.S. at 292-93. Any uncertainty has been dispelled by *Fordice*, in which the Court rejected an attempt by private petitioners to assert a claim regarding affirmative action required by Title VI regulations, noting, "Our cases make clear . . . that the reach of Title VI's protection extends no further than the Fourteenth Amendment." *Id.*, 505 U.S. at 732 n.7.

B. Implying Private Disparate-Impact Claims Against States Creates a Host of Federalism Problems

The Spending Clause remains a significant loophole to the rule that the federal government "may not compel the States to enact or administer a federal regulatory program." *Printz v. United States*, 521 U.S. 898, 935 (1997). For this reason, it is critical that Spending Clause contracts between the federal government and States be

interpreted according to the plain terms of those contracts. Under the approach taken by the Third Circuit and many other courts of appeal, however, those contracts can be rewritten after-the-fact by federal agencies. That is a terribly one-sided means of interpreting a contract.

Moreover, private actions are not even subject to the constraints that limit the actions of federal agencies. As noted, when a federal agency wishes to sanction a State for administering a Spending Clause program in a manner that has a disparate impact, the agency must account to the committees of the House and Senate with legislative jurisdiction. That requirement restrains federal agencies because it makes them show that any sanctions they wish to impose on a grantee are consistent with Congress's understanding of the law. Any agency funding actions are limited, however, by both process and political checks. By contrast, private plaintiffs are unburdened by that scheme and by the give-and-take of the political process. Plaintiffs who disagree with politically adopted state policies have, increasingly, used these generally-worded disparate-impact regulations to trump political decisions.

The lawsuits themselves tell the tale. In *Chester Residents* and *Bryant*, the plaintiffs sought to use the courts to block construction of a waste-water treatment facility and a highway, respectively. Those facilities cannot be placed in any location, and the process of siting them generates NIMBY ("Not in my back yard") fights. The plaintiffs in *Chester Residents* and *Bryant* lost their NIMBY battles, but took a second bite at the apple with their Title VI lawsuits. These lawsuits thus stall or divert needed projects to the detriment of the State's waterways when a waste-

water treatment facility is delayed and the general driving public when the highway project is stalled.

The education lawsuits are similar attempts to use the federal courts to dictate state policy. *Powell* and *Cherokee Robinson* involve challenges to state school funding systems. The Ridge and Ryan Petitioners show that the Pennsylvania system is statutory and includes a state subsidy that includes consideration of the number of children in low-income families residing in the district. *See, e.g.*, Ryan Pet. 3. The Ryan Petitioners point out, "Philadelphia . . . has 12 percent of the Commonwealth's public school children yet receives about 18 percent of the total state subsidy for basic education. . . . If the subsidy were given on a flat, per-student basis, Philadelphia would obviously get less." *Id.*, at 3 n.6. Systems like Pennsylvania's that distribute federal, state, and local funds according to a statutory formula are not the result of intentional discrimination. Rather, they are the inherently political products of the interaction between the state executive and legislative branches.

Such uses of the federal courts not only frustrate the political process but also threaten interests protected by the Eleventh Amendment. It is axiomatic under Eleventh Amendment jurisprudence that *Congress* is the entity that can abrogate the States' immunity. Congress has done that for intentional discrimination and only for intentional discrimination. The Third Circuit's ruling approves of *federal agencies* abrogating the States' sovereign immunity from private actions alleging disparate-impact claims. This is a significant leap, and one that is flatly inconsistent with a host of decisions by this Court that require Congress to speak in unmistakably clear language

before a statute will be interpreted to abrogate the States' immunity. *See, e.g., Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 55 (1996) ("Congress' intent to abrogate the States' immunity from suit must be obvious from a clear legislative statement.") (internal quotation omitted); *Gregory v. Ashcroft*, 501 U.S. 452 (1991) (Setting forth a "clear statement" rule in the Tenth Amendment context); *Atascadero State Hospital v. Scanlon*, 473 U.S. 224 (1985) (Clear and unambiguous abrogation of immunity required in Eleventh Amendment context).

CONCLUSION

For the reasons stated in the Ridge and Ryan Petitions and in this amicus brief, this Court should grant the writ of certiorari and, on review, reverse the decision of the Third Circuit Court of Appeals.

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No. 99-574

IN THE
Supreme Court of the United States

THOMAS RIDGE, GOVERNOR OF THE COMMONWEALTH OF PENNSYLVANIA, et al.,
Petitioners,

v.

DAVID POWELL, et al.,
Respondents.

Petition for Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit

REPLY OF PETITIONERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY OF PETITIONERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Unable to identify any legitimate reasons why this Court should refuse to hear the important federal questions raised in the Petition, Respondents ignore the case they pleaded in the courts below and re-write the Complaint in a vain effort to convince this Court that discriminatory effect regulations are not implicated here. Petitioners respectfully submit this Reply Brief in support of their Petition, and assert four additional reasons why *certiorari* is warranted. First, Respondents have never advanced a theory of intentional discrimination in the Complaint or in the Courts below and cannot do so here to escape review of Title VI "discriminatory effect" regulations. Second, Respondents' argument that their Section 1983 claim does not make this an appropriate case to review discriminatory effect regulations fails because Respondents' Section 1983 claim is based exclusively on Petitioners' alleged violation of the challenged discriminatory effect regulation. Moreover, like the Title VI regulation claim, the relief sought under Section 1983 calls for the district court to impermissibly re-write complex state public school funding legislature based entirely on "generally-worded regulations." Third, although Respondents argue the absence of a split of authority among the circuit courts of appeal requires this Court to deny *certiorari*, there was no circuit split at the time this Court granted *certiorari* on one of the issues presented here in *Seif v. Chester Residents Concerned for Quality Living*. Fourth, Respondents fail to address Petitioners' argument that Respondents' proposed interpretation and application of the generally-worded discriminatory effect regulation violates basic principles of federalism.

I. Respondents Mischaracterize The Complaint In Order To Avoid Review Of The Proper Scope And Enforcement Of Title VI Discriminatory Effect Regulations

The issues of whether a discriminatory effect regulation is valid, and whether a private right of action exists under such a regulation, are fundamental to this case. In an effort to avoid

review of the scope and enforcement of the single discriminatory effect regulation on which their claims are based, Respondents attempt to characterize the Complaint as stating claims for intentional discrimination. These new characterizations advance an entirely different theory of the case than what was presented in the written and oral submissions to both courts below. Indeed, Respondents began their Complaint by alleging "***that Defendants have discriminated in effect....***" Complaint at ¶1 (Appendix "H" to Petition in *Ridge v. Powell* at 201a) (emphasis added). Moreover, Count I of the Complaint did not purport to state a claim directly under Title VI but rather was itself entitled "Racial and National Origin Discrimination by ***Differential and Disparate Treatment Under Title VI Implementing Regulations.***" (Appendix "H" at 221a) (emphasis added). In support of that Count, Respondents alleged that:

> 73. The Commonwealth Defendants' funding policies and practices wrongfully discriminate...by utilizing criteria and methods that have had the foreseeable ***effect*** of subjecting such students to discrimination...in violation of the Title VI implementing regulations applicable to federal education programs...."
>
> * * *
>
> 75. The Commonwealth defendants' funding policies and practices have had the foreseeable, ***racially discriminatory effect*** of further isolating the Student Plaintiffs...."

Appendix "H" at 223a (emphasis added).

On appeal to the Third Circuit, Respondents continued to argue that their case was based on a discriminatory effect regulation, not Section 601 of the Civil Rights Act. Indeed, Respondents argued throughout their appellate brief that they were only proceeding under the discriminatory effect regulation. Supplemental Appendix "A" at 3a ("the Commonwealth's 'criteria [and] methods' of funding public education

yield racially different results. . . . The Complaint sets forth several sets of comparisons that demonstrate this adverse racial ***impact*** with respect to Commonwealth treasury revenues") (emphasis added); *id.* at 4a ("Plaintiffs pleaded racially discriminatory adverse ***impact*** with respect to total revenue as well") (emphasis added); and *id.* at 5a-6a (under the heading of "Causes of Action," stating that "All plaintiffs joined Count One which alleges racial and national origin discrimination by disparate treatment that has ***an adverse racial impact, contrary to the DOE regulations*** implementing Title VI of the Civil Rights Act of 1964") (emphasis added).

At oral argument, counsel for Respondents disclaimed any suggestion that a violation of the regulation stated a claim under the statute:

> THE COURT: I just want to understand your argument. If I understand your argument on intent, it is that because the regulation speaks in terms of impact and the regulation is promulgated under Title VI therefore, if you show a violation of the regulation or a disparate impact under the regulation, you have met the intentional requirement of Title VI?
>
> MS. BRANNAN: No, Your Honor. We surely have met the requirement of the regulation.

Transcript at 21 (Supplemental Appendix "B"). Moreover, even in this Court Respondents candidly admit that "Count I of the Complaint claims that [the Commonwealth's] funding policies and practices violate the Department of Education Title VI regulation . . .," *not* Section 601 of the Civil Rights Act. Brief in Opposition at 5. In addition to their improper attempt to characterize the Complaint as one for intentional discrimination, Respondents attempt to escape the "discriminatory effect" language of the challenged regulation by claiming it prohibits other types of conduct. Brief in Opposition at 5-6. Regardless of which subsection of the regulation is applied, the fundamental premise of the Complaint is that the

Commonwealth's education funding system discriminates in effect, or yields different results.[1] *See id.* More importantly, there is no allegation of intentional discrimination here in violation of the statute.

This Court should reject Respondents' last-minute efforts to mischaracterize the nature of the claims. Both of the claims in this case are based exclusively on a *single* federal regulation that prohibits discrimination in effect. The issues of whether such a regulation is valid and whether a private right of action exists under such a regulation are important federal questions that are at the heart of this case.

II. The Section 1983 Claim Does Not Provide An Independent Basis For Respondents' Claims

Respondents' efforts to persuade this Court to deny review based on the existence of a Section 1983 claim should be rejected for two reasons. First, Respondents' Section 1983 claim is based exclusively on Petitioners' alleged violation of a discriminatory effect regulation. If there is no cause of action based on Title VI discriminatory effect regulations, as Petitioners contend, then Respondents' Section 1983 claim must be dismissed as well. Second, whether Respondents base their claim on a Title VI regulation or Section 1983, this Court's direction not to re-write complex state legislative schemes based on "generally-worded regulations" as set forth in *Alexander v. Choate* applies equally to both claims.

A. The Section 1983 Claim Is Based Exclusively On Violations Of Discriminatory Effect Regulations

Although Respondents complain that Petitioners paid little attention to their Section 1983 claim, the Section 1983 claim is based exclusively on the challenged discriminatory effect regulation. Indeed, in Respondents' two-count Complaint, Count II, which purports to state a claim under Section 1983, explicitly so states:

---

1. Thus, Respondents' argument that this Court might not have to review the "discriminatory effect" portion of the regulation if they prevailed on another portion of the regulation makes no sense.

> 82. The rights secured by Title VI, 42 U.S.C. §§ 2000d through 2000d-4a, and the regulations implementing Title VI for education programs or activities receiving federal financial assistance, 34 C.F.R. Part 100, are rights, privileges or immunities secured by the laws within the meaning of 42 U.S.C. § 1983.
>
> 83. The Commonwealth Defendants' funding policies and practices, by discriminating against African-American, Hispanic, Asian and other minority students in the school district, harm the educational opportunities of the Student Plaintiffs *in violation of the Title VI implementing regulations as alleged in Count I above....*"

Appendix "H" at 226a (emphasis added). Moreover, respondents confirmed for this Court the fact that their Section 1983 claim was based solely on the challenged regulation, stating in their Brief in Opposition that if "Pennsylvania officials . . . violate[ ] their obligations under the Title VI regulation, [then they] are liable . . . under § 1983." Brief in Opposition at 7. Respondents, consistent with their arguments to the courts below, offered this Court no other basis for their Section 1983 claim. Thus, the Section 1983 claim is based on the same claim for discrimination in effect under the Title VI implementing regulations. The presence of such a claim adds nothing to the analysis of whether review is appropriate.

B. *Alexander v. Choate's* Prohibitions Against Using "Generally-Worded Regulations" To Re-Write Complex State Funding Legislation Apply Equally To Section 1983 Claims

The Petition for a Writ of Certiorari argued, based on this Court's reasoning in *Alexander v. Choate*, that the generally-worded regulation upon which Respondents rely in support of their Title VI claim cannot, consistent with federalism concerns, be used to re-write complex state funding legislation. Respondents gloss over this argument (*see* Section IV below), but the argument applies equally to Section 1983 claims, par-

ticularly where, as here, Respondents seek the exact same relief under both claims. *See* Appendix "H" at 226a-227a (asserting a single claim for relief under both Counts). In short, the presence or absence of a Section 1983 claim under the facts of this case is irrelevant and does not impact the sound reasons for granting *certiorari*.

III. The Absence Of A Circuit Split On The Issue Of Title VI Regulations Is Immaterial

The Petition for a Writ of Certiorari asks this Court to decide whether discriminatory effect regulations are valid and support a private cause of action because these questions are important federal questions that should be decided by this Court, and because the Third Circuit decided the questions in a way that conflicts with other decisions of this Court. These are valid bases for review. Supreme Court Rule 10.

The absence of any split of authority in the circuit courts is immaterial. As argued in the Petition, this Court previously granted *certiorari* on a nearly identical issue in *Chester Residents*, despite the fact that there was no such split of authority. Because this Court vacated the judgment in that case there still remains "an important question of federal law that has not been, but should be, settled by this Court." Supreme Court Rule 10. Moreover, despite the purported unanimity of the courts of appeal, those federal courts, as Petitioners contend, "decided an important federal question in a way that conflicts with relevant decisions of this Court." *Id.* Accordingly, review of these questions is entirely appropriate.

IV. Respondents Ignore Petitioners' Federalism Argument

Respondents do not address Petitioners' federalism argument. The issue is not whether "public school education [is within] the reach of the federal civil rights laws based on race." Brief in Opposition at 26. The issue is whether Congress, in authorizing federal agencies to promulgate regulations under Title VI, "clear[ly] and manifest[ly]" intended to "pre-empt the historic powers of the States" to devise legislative schemes to fund public schools. *Gregory v. Ashcroft,* 501 U.S. 452, 461 (1991); *see also Rodriguez v. San Antonio Inde-*

pendent School District, 411 U.S. 1, 40, 41 (1973) (holding public school funding is an area in which this Court has traditionally deferred to legislatures). Petitioners argued that the generally-worded regulation that Respondents rely on here did not evidence such an intent. Moreover, Petitioners pointed out the inherent dangers of the interpretation advanced by Respondents, noting that ultimately a local government entity may be able to use federal regulation "not only to attack the allocation of state monies, but also to attempt to dismantle the [legislatively mandated] system of local control over school funding." Petition at 27.

Respondents failed to address these fundamental points. Citing no cases to support their position, Respondents instead attempt to distinguish *Alexander v. Choate* on the grounds that it did not involve "racial discrimination." Brief in Opposition at 26. This distinction is irrelevant. This Court specifically held that Section 504 of the Rehabilitation Act of 1973, which was before the Court in *Alexander*, was modeled in part on Title VI. Moreover, Respondents made no effort whatsoever to distinguish the wording of the regulation at issue in *Alexander* from the wording of the regulation at issue in this case, realizing that there is no material difference between the regulations, and the logic of *Alexander* applies with equal force here.

Finally, Respondents argue in a footnote that their case does not involve an attempt to obtain additional funding based on factors external to the state's subsidy program; rather, they claim their case involves a "straightforward claim of racial discrimination inherent in the funding formula itself." Brief in Opposition at 26, n.13. Regardless of the characterization of the claim, Respondents still intend to ask the district court to give them more money.

CONCLUSION

For the reasons set forth in their Petition for a Writ of Certiorari, and in this Reply, Petitioners respectfully request that this Court grant the Petition.

Respectfully submitted,

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APPENDIX

APPENDIX A
CITED EXCERPTS FROM BRIEF OF APPELLANTS

IN THE

United States Court of Appeals for The Third Circuit

Nos. 98-2096, 98-2157

DAVID POWELL; SHELEAN PARKS; PATRICE EVERAGE; JULIA A. DAVIS; YVETTE BLAND; GERALDINE NEWTON; MARIA M. RIVERA; MARY E. MILLER; GREGORY LUZAK; CATHERINE LUZAK; FU-ZHEN XIE; THE BLACK CLERGY OF PHILADELPHIA AND VICINITY; PHILADELPHIA BRANCH NAACP; ASPIRA, INC. OF PENNSYLVANIA; PARENTS UNION FOR PUBLIC SCHOOLS; CITIZENS COMMITTEE ON PUBLIC EDUCATION IN PHILADELPHIA; PARENTS UNITED FOR BETTER SCHOOLS; DAVID W. HORNBECK, Superintendent, The School District of Philadelphia; FLOYD W. ALSTON, President, Board of Education of the School District of Philadelphia; BOARD OF EDUCATION OF THE SCHOOL DISTRICT OF PHILADELPHIA; THE SCHOOL DISTRICT OF PHILADELPHIA; EDWARD G. RENDELL, Mayor, City of Philadelphia; CITY OF PHILADELPHIA,

Appellants,

PHILADELPHIA FEDERATION OF TEACHERS LOCAL 3; TED KIRSCH, President, Guardian ad Litem,

Appellants (Intervenors in District Court),

v.

THOMAS J. RIDGE, Governor of the Commonwealth of Pennsylvania; DR. JAMES P. GALLAGHER, Chairperson, Commonwealth of Pennsylvania State Board of Education; DR. EUGENE W. HICKOK, Secretary of Education; BARBARA HAFER, Treasurer,

Appellees,

MATTHEW J. RYAN; ROBERT C. JUBERLIRER; JESS M. STAIRS; JAMES J. RHOADES,

Appellees (Intervenors in District Court).

Appeal from the Final Judgment of the United States District Court for the Eastern District of Pennsylvania

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Commonwealth legislative and gubernatorial action. *See Shapp v. Sloan*, 480 Pa. 449, 391 A.2d 595 (1978).

The Commonwealth's "criteria [and] methods" of funding public education yield racially differential results: Funding per child is less in the predominantly minority School District than it is per child in those otherwise similarly situated districts that educate predominantly white students. J.A. 37-39, ¶¶53, 55. This racial disparity per child exists for Philadelphia *and* as well for other predominantly minority districts.[3] The Complaint sets forth several sets of comparisons that demonstrate this adverse racial impact with respect to Commonwealth treasury revenues. In particular:

- Pennsylvania's funding system "gives school districts with high proportions of white students on average more Commonwealth treasury revenues than school districts with high proportions of non-white students, where the levels of student poverty are the same." J.A. 37-38, ¶53.

- In 1990-91, the School District "received 17.2% *less* [per child in Commonwealth treasury revenues] than the average of school districts with the same poverty rate." J.A. 38, ¶53 (emphasis added).

---

3. Based on Commonwealth data, the 12 school districts in Pennsylvania with 50% or more minority students as of all dates relevant to the Complaint are Philadelphia, Wilkinsburg Borough, Chester-Upland, Harrisburg, Duquesne, Farrell Area, William Penn, Lancaster, Aliquippa, York City, Reading, and Pittsburgh.

- "By 1995-96, Philadelphia received 33.1% *less* than expected statistically" per child on this same measure. J.A. 38, ¶53 (emphasis added).

"By 1995-96, 11 out of [the] 12 high-minority school districts . . . had *less* Commonwealth treasury revenues per student than school districts with higher white enrollments and the same level of poverty." J.A. 38, ¶54 (emphasis added).

- "On average, for 1995-96, for two school districts with the same level of poverty as measured by AFDC, the school district with higher non-white enrollment received $52.88 *less* [Commonwealth treasury revenues] per pupil for each increase of 1% in non-white enrollment." J.A. 39, ¶55.

The Complaint also alleges that racial disparities per child and adverse racial impact in Commonwealth treasury revenues are increasing over time:

- Between 1992 and 1996, the Commonwealth increased Commonwealth treasury revenues per pupil to districts that were 50% or more white by $498. The Commonwealth increased Commonwealth treasury revenues per pupil in Philadelphia by only $361, and to districts that had 75% or more minority student enrollments, including Philadelphia, by an average of only $384. J.A. 40, ¶58.

Plaintiffs pleaded racially discriminatory adverse impact with respect to total revenue as well. As with Commonwealth treasury revenues, the racial disparity in total revenues per pupil harms students in Philadelphia, the vast

harmed by the Commonwealth's racially discriminatory system of public school funding described in the Complaint because it "contribute[s] to declining urban population and erosion of the City's tax base." J.A. 42, ¶64. In sum, the Commonwealth's "racially discriminatory funding policies and practices impose excessive requirements on local funding, making it impossible for the City to afford the tax relief its citizens desperately need, and making it impossible for the City to provide the competitive tax rates and public education system which it needs to attract and retain residents and jobs in order to bolster and replenish its tax base and further revitalize the schools." J.A. 43, ¶66. *See* J.A. 25-26, 42-43, ¶¶25-26, 64-66 (stating the interests of the City plaintiffs and how they are harmed by defendants' conduct).

The Complaint names as defendants four Commonwealth officials with power and responsibility for public education, including recommendation and approval of appropriations, administration and supervision of the public schools, and receipt and distribution of federal and state funds. J.A. 26-28, ¶¶27-30. Those officials are: (1) Governor Thomas J. Ridge; (2) Chairperson of the State Board of Education Dr. James P. Gallagher; (3) Secretary of Education Dr. Eugene W. Hickok; and (4) Treasurer Barbara Hafer. Plaintiffs name each defendant in his or her "official and individual capacities." J.A. 26-28, ¶¶27-30.

D. The Causes of Action.

1. Count One. All plaintiffs join Count One, which alleges racial and national origin discrimination by disparate treatment that has an adverse racial impact, contrary to the DOE regulations implementing Title VI of the Civil Rights

Act of 1964. J.A. 43-48, ¶¶67-78. Count One sets forth the prohibition in Title VI against racial discrimination by entities that receive federal funds:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

42 U.S.C. § 2000d. J.A. 43, ¶68. Title VI further requires:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity... is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.

42 U.S.C. §2000d-l. *See* J.A. 43, ¶69. DOE adopted such regulations, 34 C.F.R. part 100, which prohibit federal fund recipients, "on ground of race, color, or national origin," from:

> Provid[ing] any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
>
> Subject[ing] an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program[.]

34 C.F.R. § 100.3(b)(1) (ii), (iii). J.A. 44, ¶70.

The regulations further prohibit discriminatory adverse impact based on race or national origin:

APPENDIX B
CITED EXCERPTS FROM TRANSCRIPT OF JUNE 9, 1999 ORAL ARGUMENT

DAVID POWELL; SHELEAN PARKS; PATRICE EVERAGE; JULIA A. DAVIS; YVETTE BLAND; GERALDINE NEWTON; MARIA M. RIVERA; MARY E. MILLER; GREGORY LUZAK; CATHERINE LUZAK; FU-ZHEN XIE; THE BLACK CLERGY OF PHILADELPHIA AND VICINITY; PHILADELPHIA BRANCH NAACP; ASPIRA, INC. OF PENNSYLVANIA PARENTS UNION FOR PUBLIC SCHOOLS; CITIZENS COMMITTEE ON PUBLIC EDUCATION IN PHILADELPHIA; et al.

PHILADELPHIA FEDERATION OF TEACHERS LOCAL 3; TED KIRSCH, PRESIDENT, GUARDIAN AT LITEM,

Intervenors in D.C.

v.

THOMAS RIDGE, Governor of the Commonwealth of Pennsylvania; JAMES P. GALLAGHER, Chairperson Commonwealth of Pennsylvania State Board of Education; EUGENE W. HICKOK, Secretary of Education; BARBARA HAFER, Treasurer

MATTHEW J. RYAN; ROBERT C. JUBELIRER; JESS M. STAIRS; JAMES J. RHOADES,

Intervenors in D.C.

DAVID POWELL; SHELEAN PARKS; PATRICE EVERAGE; JULIA A. DAVIS; YVETTE BLAND; GERALDINE NEWTON; MARIA M. RIVERA; MARY E. MILLER; GREGORY LUZAK; CATHERINE LUZAK; FU-ZHEN XIE; THE BLACK CLERGY OF PHILADELPHIA AND VICINITY; PHILADELPHIA BRANCH NAACP; ASPIRA, INC. OF PENNSYLVANIA; PARENTS UNION FOR PUBLIC SCHOOLS; CITIZENS COMMITTEE ON PUBLIC EDUCATION IN PHILADELPHIA; et al.

Appellants No. 98-2096

Page Two (Continued)

9:30 A.M.

THE ALBERT BRANSON MARIS COURTROOM
WEDNESDAY, JUNE 9, 1999
Coram: SLOVITER, MANSMANN, Circuit Judges
and WARD, District Judge
Nos. 98-2096/2157

DAVID POWELL; SHELEAN PARKS; PATRICE EVERAGE; JULIA A. DAVIS; YVETTE BLAND; GERALDINE NEWTON; MARIA M. RIVERA; MARY E. MILLER; GREGORY LUZAK; CATHERINE LUZAK; FU-ZHEN XIE; THE BLACK CLERGY OF PHILADELPHIA AND VICINITY; et al.

PHILADELPHIA FEDERATION OF TEACHERS LOCAL 3; TED KIRSCH, PRESIDENT, GUARDIAN AT LITEM,

Intervenors in D.C.
Appellants No. 98-2157

v.

THOMAS RIDGE, Governor of the Commonwealth of Pennsylvania; JAMES P. GALLAGHER, Chairperson Commonwealth of Pennsylvania State Board of Education; EUGENE W. HICKOK, Secretary of Education; BARBARA HAFER, Treasurer

MATTHEW J. RYAN; ROBERT C. JUBELIRER; JESS M. STAIRS; JAMES J. RHOADES,

Intervenors in D.C.

June 9, 1999

Oral argument held before Judge Sloviter, Judge Mansmann, and Judge Ward, on the above date, transcribed from the taperecorded proceeding by Melissa M. Johnston, a Professional Reporter and a Commissioner of the Commonwealth of Pennsylvania.

APPEARANCES:

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JOHN P. KRILL, JR., ESQUIRE
(Matthew J. Ryan, et al.)

* * *

facts for Courts to develop what really amounts to intent and impact —

THE COURT: I just want to understand your argument. If I understand your argument on intent, it is that because the regulation speaks in terms of impact and the regulation is promulgated under Title VI therefore, if you show a violation of the regulation or a disparate impact under the regulation, you have met the intentional requirement of Title VI?

MS. BRANNAN: No, Your honor. We surely have met the requirement of the regulation.

THE COURT: But, of course, there are a lot of questions as to the enforceability, the viability, of the regulation. Go ahead.

MS. BRANNAN: Yes, Your Honor. On that question —

* * *